



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 06 जनवरी, 2025 / 16 पौष, 1946

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Dated, the December, 2024

No: LEP-E/1/2024, 2024.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of

awards of the following cases announced by **Presiding Judge, Labour Court-Cum-Industrial Tribunal , Dharamshala**, on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* “e-Gazette. :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	42/18	Neelam Rani	M.D.M/S Terrace Pharmaceuticals	02-05-2024
2.	82/22	Sikandar	M/S Jindal Medicot Amb, Una	11-05-2024
3.	74/23	Gagandeep	M/S Stanford Lab Pvt. Ltd.	24-05-2024
4.	638/16	Sushil Kumar	Er.-in-Chief.HPPWD, Nirman Bhawan, Shimla & other	28-05-2024
5.	10/17	Manohar Lal	-do-	28-05-2024
6.	606/16	Rajesh Kumar	-do-	28-05-2024
7.	667/16	Godan Devi	-do-	28-05-2024
8.	566/16	Jeevan Lal	-do-	28-05-2024
9.	11/17	Vipin Kumar	-do-	28-05-2024
10.	44/17	Anil Kumar	-do-	28-05-2024
11.	905/16	Promila Devi	-do-	28-05-2024
12.	903/16	Jai Devi	-do-	28-05-2024

By order,

(PRIYANKA BASU INGTY, IAS)
Secretary (Lab. Emp. & O.P.) .

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM - INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 42/2018

Date of Institution : 19-4-2018

Date of Decision : 02-5-2024

Smt. Neelam Rani w/o Shri Kishori Lal, r/o Village Anoh Diyal, P.O. Dhameta, Tehsil Fatehpur, District Kangra, H.P. . . *Petitioner.*

Versus

The Managing Director, M/s Terrace Pharmaceuticals (P) Ltd., Plot No. 3 B(a), Phase-III, Industrial Area Sansarpur Terrace, District Kangra, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Umesh Nath Dhiman, Ld. Adv.

For the respondent : Sh. Anubhav Walia, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the I.D. Act') to this court for adjudication:—

“Whether, the termination of services of Smt. Neelam Rani w/o Shri Kishori Lal, r/o Village Anoh Diyal, P.O. Dhameta, Tehsil Fatehpur, District Kangra, H.P. *w.e.f.* 23-09-2016 by the Managing Director, M/s Terrace Pharmaceuticals (P) Ltd. Plot No. 3 B(a), Phase-III Industrial Area Sansarpur Terrace, Distt. Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that she was initially appointed as helper by the respondent on 1-6-2010 and her services were verbally terminated *w.e.f.* 30-9-2016. She has completed 240 days in each calendar year and thus termination of her services *w.e.f.* 30-9-2016 is unfair, unjust, illegal arbitrary, malafide and unconstitutional. After illegal termination of her services, she is continuously visiting the office of the respondent as well as office of subordinate of the respondent. She is not gainfully employed in any Government/Semi Government/Private concern, Institution nor having her own business or work. She was assured by the respondent that she would be engaged after 3-4 months but when her requests were not accepted, she approached this Court. She would have no grievance, if the services of other similarly situated worker and her juniors were also terminated, however, the respondent has adopted pick and chose policy in contravention of the provisions of law. No prior notice under Section 25-F (a) of the I. D. Act was served upon her before terminating her services. The respondent has also not complied with the provisions of Section 25-F (b) and (c) of the I. D. Act while terminating her services. The respondent has retained workers junior to her in service while terminating her services and thereby violated the principle of 'last come first go' and as such her disengagement is illegal and void ab initio. It has been averred that the respondent has also engaged fresh hands without giving an opportunity to her for re-employment and therefore the respondent has also violated the provisions of Section 25-H of the I. D. Act. Hence this petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, non joinder of necessary party, estoppel, limitation and that petitioner has not approached the court with clean hands. On merits, it has been averred that the petitioner had worked in the unit of respondent for 5 months and thereafter she has left the job on her own after receiving full and final payment as per receipt dated 23-9-2016. The petitioner was engaged on job as daily rated worker and she was called as and when the necessity arose. In-fact, the services of the petitioner were utilized in peak seasons. She was a seasonal worker and had left the job after receiving full and final payment. She was neither a part-time nor a regular employee. The petitioner had at no point of time approached him after 23-9-2016. The petitioner had given undertaking that she had received full and final payment including her due earned wages, bonus, gratuity compensation etc. at the time of receiving full and final payment. She has also undertaken that she would not raise any further claim or dispute of any kind whatsoever against the management in future. The petitioner had also given up her right for reinstatement and re-employment and thus the claim of the petitioner is hopelessly time barred. No assurance was given to the petitioner. It has been denied that policy of pick and chose was adopted. The petitioner is not a worker as per Clause(s) of Section 2 of the I. D. Act, therefore, question of violation of provisions

of Section 25 of the I. D. Act does not arise. The petitioner has not rendered continuous service of 240 days in any calendar year. There was no necessity to serve any notice upon the petitioner as she had left the job on her own after making full and final settlement, therefore, the provisions of Sections 25-G and 25-H of the I. D. Act have not been violated. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 19.02.2022:—

1. Whether termination of services of the petitioner by the respondent *w.e.f.* 23-09-2016 was/is illegal and unjustified, as alleged? .. *OPP.*
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to from the employer/respondent? .. *OPP.*
3. Whether the claim petition is not maintainable? .. *OPR.*
4. Whether the claim petition is bad for non-joinder of necessary parties? .. *OPR.*
5. Whether the petitioner is estopped to file claim petition on account of her act, conduct and acquiescence, as alleged? .. *OPR.*
6. Whether the petitioner has not approached this Court with clean hands and has suppressed material facts, as alleged. If so, its effects? .. *OPR.*

Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondent has examined Accountant of M/s Terrace Pharmaceuticals (P) Ltd. as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

11. Both these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The petitioner has claimed that she was engaged as helper by the respondent on 1.6.2010 and she worked for 240 days in each calendar year till 30-9-2016 when her services were verbally terminated by the respondent without serving any notice upon her and the respondent has even retained junior to her in service while terminating her services and also engaged fresh hands after termination of her services and therefore the order of termination of her services be set aside and the respondent be directed to re-engage her with past seniority along with other consequential benefits *w.e.f.* 30-9-2016.

13. On the other hand, the respondent has refuted the claim of the petitioner. The respondent has claimed that the petitioner was not engaged as helper as claimed by her; rather she was engaged as daily rated worker for seasonal work and she was engaged in the peak of the season for seasonal works and she has worked for five months only with the respondent company and that she herself had left the job after receiving full and final payment vide receipt dated 23-9-2016. Thus the petitioner is not entitled to any relief as claimed by her.

14. The petitioner Neelam Rani, in substantiation of her claim, appeared as PW1 and filed affidavit Ext. PW1/A in her examination-in-chief wherein she has affirmed all the averments made in the petition on oath. In her cross-examination, she was admitted that she was not given any appointment letter by the company. She has also admitted that no termination letter was given to her. She has also admitted that she has not placed any document on record which proves that she had worked for 240 days. She has admitted that she was not regular employee but she was seasonal employee. She denied that the respondent used to call her for seasonal work. She has admitted her signatures on vakalatnama and receipts Ext. R-1 and Ext. R-2. She has denied that she had left the job on her own. She has denied that she was made full and final payment when she left the company. She has denied that she has filed this present case just to harass the company.

15. On the other hand, the respondent has examined Raj Kumar, Accountant as RW1, who has filed affidavit Ext. RW1/A in examination-in-chief wherein he has affirmed all the averments made in the reply on oath. In his cross-examination, he has stated that the petitioner was engaged before his joining as accountant in the respondent company. He has denied that the petitioner was engaged as helper on 1-6-2010 and added that she was a seasonal worker. He has denied that the petitioner had worked as seasonal worker since 1-6-2010. He has not brought any record to show that the petitioner was engaged as seasonal worker and added that no record of the seasonal workers was prepared. They used to prepare a sheet to mark the presence of the worker and they used to pay wages of actual working days after preparing voucher. He has admitted that they had not produced any such sheet on the record. He has denied that the petitioner had worked in their company for more than 240 days in each year. He has admitted that the petitioner used to sign in Hindi and added that she signed several times in Hindi in his presence. He has stated that the cashier used to make the payment to the petitioner in his presence. The petitioner had made payment once in his presence vide receipts Ext. R-1 and Ext. R-2. They had not produced the record of payments made to her earlier. He has admitted that receipt Ext. R-1 and R-2 are written in English. He has denied that they had not explained about the receipts Ext. R-1 and Ext. R-2 to the petitioner before taking her signatures on them. He has admitted that she was disengaged on 30-9-2016. He has denied that they had engaged someone else in her place. He has admitted that the company was satisfied with the work of the petitioner. He has denied that they had illegally

terminated the services of the petitioner. They had not given any compensation to the petitioner and added that they had given the amount due to her. He has admitted that they had not issued any notice to the petitioner before disengaging her and added that she was seasonal worker. He has denied that full wages have not been paid to the petitioner. He has also denied that they had obtained the signatures of the petitioner on Ext. R-1 and Ext. R-2 by playing fraud. He has stated that the seasonal work used to start from the month of April and ends the month of August-September and thereafter the regular workers used to do the production work.

16. This is entire evidence led by both the parties.

17. Thus it is evident from the resume of evidence the petitioner as well as witness of the respondent that the petitioner herself has admitted that she was not a regular employee of the respondent; rather she was seasonal employee and that no appointment letter was issued to her nor any termination order was given to her. She categorically has admitted that she has not placed any document on record to prove that she had worked for 240 days with the respondent. There is also nothing in the evidence of Raj Kumar, RW1 from which it could be inferred that the petitioner was engaged on 1-6-2010 and she worked for 240 days in each calendar year continuously till 30-9-2016 or during the period of 12 months preceding the date of termination of her services on 30-9-2016. He (RW1) categorically has stated that the petitioner was seasonal worker, however, he has admitted that the petitioner was disengaged on 30-9-2016.

18. Hence in view of unequivocal admission of the petitioner Neelam Rani, PW1 that she was not a regular employee but a seasonal worker, the evidence of Raj Kumar, RW1 that the petitioner was engaged as daily rated worker and they used to engage her during peak season for seasonal work and she was seasonal worker, has to be accepted to be correct. Consequently, it can safely be concluded that the petitioner has failed to prove that she was engaged on 1-6-2010 and she continuously worked till 30-9-2016 under the respondent.

19. So far as the plea of respondent that the petitioner herself had left the work is concerned, it is true that the petitioner in her cross-examination has admitted her signatures on the receipt Ext. R-1 and Ext. R-2 whereby a sum of Rs.5600/- was paid to her as full and final settlement of her dues, however, these receipts only prove that the petitioner was paid the wages for the period she had worked with the respondent, but the witness of the respondent Raj Kumar, RW1, in his cross-examination, categorically has admitted that they have disengaged the services of the petitioner on 30.9.2016 and therefore in view of admission of Raj Kumar, RW1 it is established on record the respondent has terminated the services of the petitioner on 30-9-2016.

20. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

21. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

22. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

23. In the case in hand, the petitioner has not led any cogent evidence on record to prove that she has worked for 240 days during the period of 12 calendar months preceding the date of termination of her services on 30-9-2016. The petitioner herself had admitted that she was not a regular employee but a seasonal worker and the petitioner has not placed any document on record to prove that she had worked for 240 days in any calendar year or even during the period of 12 calendar months preceding the date of termination of her services whereas the witness of respondent Raj Kumar, RW1, has maintained the stand of the respondent that the petitioner has worked for five months only. Thus, in the absence of any cogent evidence having been led by the petitioner, it can safely be concluded that the petitioner has failed to prove that she had worked for 240 days during the period of 12 calendar months preceding the date of termination of her services on 30-9-2016 and thus she was not in continuous service as per Section 25-B of the I. D. Act and therefore there was no necessity to serve notice under Section 25-F(a) of I. D. Act upon her before termination of her services. Hence violation of Section 25-F of I. D. Act is not proved.

24. The petitioner has also alleged that the respondent has retained workers junior to her while terminating her services on 30-9-2016, however, the petitioner has neither stated the names of her junior workmen nor has produced any document/evidence on record to prove that any workman junior to her was retained by the respondent while terminating her services. There is nothing in the evidence of Raj Kumar, RW1 from which it could be inferred that the respondent has retained workmen junior to the petitioner while terminating her services, therefore, violation of Section 25-G is also not proved.

25. The petitioner has also alleged that the respondent has engaged fresh hands after termination of her services on 30-9-2016, however, the petitioner has also not led any cogent evidence on record to prove that the respondent has engaged fresh hands after termination of her services. Hence violation of Section 25-H of the I. D. Act is also not proved.

26. Since the petitioner has failed to prove that the respondent has terminated her services in violation of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act, she is not entitled to any relief as claimed by her. Consequently both these issues are decided against the petitioner and are answered in negative.

Issue No.3

27. In view of my returned findings on issues No.1 and 2, claim petition is not maintainable. Hence this issue is decided in favour of the respondent and is answered in affirmative.

Issue No.4

28. Neither any evidence has been led nor any arguments were addressed as to which necessary party has not been impleaded by the petitioner. Hence the respondent has failed to prove that the claim of the petitioner is bad for non-joinder of necessary party. Consequently, this issue is decided against the respondent and is answered in negative.

Issue No.5

29. Neither any evidence has been led nor any arguments were addressed as to which act and conduct of the petitioner estopped her from filing the present petition. Hence the respondent has failed to prove that the petitioner is estopped by her act, conduct and acquiescence from filing the petition. Consequently, this issue is decided against the respondent and is answered in negative.

Issue No.6

30. Neither any evidence has been led nor any arguments were addressed by the respondent as to how the petitioner has not approached the court with clean hands and what material have been suppressed her from the court. Consequently, the respondent has failed to prove that the petitioner has not approached the court with clean hands and suppressed material facts from the court. Hence, this issue is decided against the respondent and is answered in negative.

Relief

31. In view of my findings returned on the above issues, the present claim petition fails and is accordingly dismissed. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 2nd day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Sikander s/o Shri Swaran Singh, r/o V.P.O. Haripur, Tehsil Dehra, District Kangra, H.P.

Respondent(s) : The Factory Manager/Employer, M/s Jindal Medicot Limited, V.P.O. Thathal, Tehsil Amb, District Una, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 82/2022

Present:-

Applicant : Sh. Rajinder Singh, Ld. Advocate

Respondent : Sh. N.L. Kaundal, Ld. AR and Sh. Vijay Kaundal, Ld. Counsel.

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

The learned counsel for the petitioner vide his separate statement has stated that the parties have effected compromise and the petitioner has received Rs.75,000/- (Rupees Seventy Five Thousand Only) as full and final payment of settlement of his claim, therefore, the petitioner does not want to pursue this claim further and the reference be decided as per compromise.

Therefore, in view of the statement of the learned counsel for the petitioner, the claim petition is disposed of being compromised in terms of the compromise effected by the parties. The reference is answered accordingly.

A copy of this Award be sent to the appropriate Government for publication in the official gazette.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

File after due completion be consigned to the Record Room.

Member
(**B.S. Pathania**)

Judicial Officer
(**Naresh Kumar**)

Announced:

Date: 11.05.2024

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT UNA)

Ref No. : 74/2023

Date of Institution : 23-11-2021

Date of Decision : 24-05-2024

Shri Gagandeep Singh s/o Shri Rajesh Kumar, r/o Village & P.O. Upper Basal, Tehsil & District Una, H.P. . . *Petitioner.*

Versus

1. The Managing Director, M/s Stanford Laboratories Pvt. Ltd., Industrial Area Mehatpur, Una, HP-174315.
2. The Vice President, M/s Stanford Laboratories Pvt. Ltd., Industrial Area Mehatpur, Una, H.P.
3. Assistant General Manager, HR, M/s Stanford Laboratories Pvt. Ltd., Industrial Area Mehatpur, Una, H.P. . . *Respondent.*

Direct claim/Reference under Section 10(1) of the Industrial Disputes Act, 1947

For the Petitioner : Petitioner in person with Sh. N.L. Kaundal, Ld. AR

For Respondent : Sh. Rajeev Kumar Sharma, Ld. Adv.

AWARD

The petitioner has filed direct claim petition under Section 10 (1) read with Section 2-A (2) of the Industrial Disputes Act, 1947 and Section 151 CPC for setting aside unlawful termination of his services *w.e.f.* 15-7-2021.

2. The case was listed for petitioner's evidence, however, the petitioner vide his separate statement has stated that he does not want to pursue this claim and withdraws the same.

3. Hence, in view of the statement of the petitioner, the claim petition is dismissed as withdrawn. The reference is answered accordingly

4. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 24th day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Una).

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 638/2016

Date of Institution : 9-9-2016

Date of Decision : 28-5-2024

Shri Sushil Kumar s/o Shri Damodar Dass, r/o Village Sanour, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

“Whether alleged termination of services of Sh. Sushil Kumar s/o Sh. Damodar Dass Vill. Sanour, P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P. during 4/2000 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. had worked as beldar on daily wages basis during 1/1999 to 4/2000 only for 404 days, and has raised his industrial dispute vide demand notice dated 30-03-2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of January, 1999 and that he had worked for 240 days in each calendar year. The respondents verbally terminated his services in the month of April, 2000 without issuance of one month's notice or payment of one month's salary in lieu of notice period to him. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D.Act. After terminating his services, the respondents have also employed fresh workers namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2001, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but he was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, he was not re-engaged. Thereafter he approached the respondents in the month of July, 2000, April, 2002, November, 2004, May and October 2005 and March 2006, September, 2005 and JMarch, 2006 to reinstate him but the

respondents have shown inability to reinstate him on the ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. He made representations orally as well as in writing continuously to the respondents, but he was not re-engaged. The respondents had also retrenched 1087 workmen on 8-7-2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to him at the time of re-engagement of aforesaid workmen. He raised industrial dispute vide demand notice dated 30-3-2015, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute *vide* demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No. 8315/2012 and the Hon'ble High Court *vide* judgment dated 20-12-2012 decided the same along-with 46 connected matters with CWP No. 5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and choose has taken plea of delay in his case. The industrial dispute raised by him does not suffers from delay and laches. The act of the respondents terminating his services in April, 2000 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. He is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections *qua* maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar during month of January, 1999 and he worked upto April, 2004 and he had worked for 290 days in the year 1999 and 144 days in 2000. It has been averred that the services of the petitioner were not terminated; rather he himself had left the job on his own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to him. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi on 30-3-2015 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 21-8-2019:—

1. Whether termination of the services of petitioner by the respondents during April, 2000 is/was illegal and unjustified as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable, as alleged? OPR 1&2
4. Whether the claim petition suffers from delay and laches as alleged? . . . *OPR*.

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides himself, has examined Yogesh Chander, PW2 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:-

Issue No.1 : Yes

Issue No.2 : Compensation

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1,2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wager in January, 1999 and he worked as such till April, 2000, however, it has been averred that he had worked for 290 days in the year 1999 and 144 days in the year 2000 only.

13. The petitioner has alleged that he had worked for 240 days in each calendar year and that the respondents had terminated his services without issuing one month's notice to him or payment of one month's wages in lieu of notice period and that the respondents had retained junior to him in service namely Roshani Devi, Mamta Devi and Inder Singh while terminating his services and also engaged fresh hands after termination of his services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on his own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. PW1/G produced on record by the petitioner, he had worked for 290 days in the year 1999 and 114 days in 2000 whereas as per mandays chart Ext. PW1/H, he had worked for 144 days in the year 2000, but it is a clerical error as the sum total of working days from January to April, 2000 come to 114 days only. Hence, the petitioner had worked for 290 days in the year 1999 and 114 days in the year 2000 as also admitted by the petitioner (PW1).

16. The petitioner Sushil Kumar, in substantiation of his claim, appeared as PW1 and has filed affidavit Ext. PW1/A in his examination-in-chief wherein he has affirmed the averments made in the petition on oath. He has also tendered copy of seniority list Ext. PW1/B, copy of another seniority list in Hindi Ext. PW1/C, copies of representation dated 5-1-2004, 6-1-2006 & Ext. PW1/D and Ext. PW1/E, letter dated 7.8.2014 Ext. PW1/F, copy of mandays chart Ext. PW1/G and another copy of mandays chart Ext. PW1/H in evidence. He has been cross-examined at length, but despite lengthy cross-examination, he has denied that he himself had left the job. He has feigned ignorance that the respondents have engaged the workmen on compassionate ground. He has also denied that he was not re-engaged as he himself had left the job.

17. Yogesh Chander PW2 posted as SDO HPPWD Dharampur, District Mandi, H.P. has stated that he has brought the record *i.e.* muster rolls pertaining to the petitioner. He has examined the original muster rolls and there is no entry in the same that the petitioner had left the job at his own.

18. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered seniority list Ext. R-1 in evidence. In his cross-examination, he has denied that the services of the petitioner were terminated in April, 2000 and added that he himself had left the job. No notice was issued to the petitioner after his leaving the job. He did not know that the petitioner had made representations Ext. PW1/D to Ext. PW1/F to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/B were engaged after April, 2000. He has admitted that no muster roll was issued to the petitioner and added that he himself had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

19. This is entire evidence led by both the parties.

20. It is evident from the resume of the evidence of the witnesses of both the parties discussed above supra that the petitioner has led sufficient evidence on record to prove the fact that his services were terminated by the respondents. The petitioner Sushil Kumar PW1 categorically has stated that his service were terminated by the respondents in April, 2000 and despite his lengthy cross-examination, he has maintained his stand. The petitioner has filed copy of representations dated 5.1.2004 Ext. PW1/D and letter dated 6-1-2006 Ext. PW1/E moved to the respondent No.2 on record. In these applications, the petitioner had claimed that his services were

terminated and he had repeatedly requested the respondents till 6-1-2006 to re-engage him. Both these representations have been proved by the petitioner on record. The exhibition of these representations was objected to on behalf of the respondents, however, the respondents have not disputed the fact that the petitioner had moved representations to the department. Er. Vivek Sharma, RW1, in his cross-examination, has not denied the fact that the petitioner had not made the aforesaid representations to the department; rather he feigned ignorance about the same and therefore the evidence of the petitioner that he had made representations Ext. PW1/D and Ext. PW1/E to the respondents, has to be accepted to be correct.

21. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, he would not have made representations one after the another to re-engage him. Therefore the evidence of the petitioner Sushil Kumar PW1 that the respondents have terminated his services in April, 2000 duly corroborated by representations Ext. PW1/D and Ext. PW1/E, has to be accepted to be correct.

22. Even otherwise, it is fairly settled that the plea of abandonment of work is to be proved by the employer. Hon'ble High Court in **CWP No. 3634 of 2009** titled as **Narain Singh vs. The State of Himachal Pradesh & Ors.** decided on 21-6-2016, has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Hon'ble High Court in **State of H.P. and Anr. vs. Partap Singh, 2016 (6) ILR (H.P.) 1314** has held that it is settled that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer and even if, it is presumed that the workman had abandoned the job himself and the same is a gross misconduct, in that case some disciplinary inquiry should have been initiated against the workman and the employer has to prove the same by leading evidence.

23. In the case in hand, the respondents has not led any cogent evidence on record to prove the abandonment of work of by the petitioner and therefore plea of the respondent that the petitioner himself has left the work cannot be accepted. Consequently, it can safely be held that the respondent has terminated the services of the petitioner in April, 2000.

24. As per the provisions of Section 25-F of the I. D. Act a workman is deemed to be in continuous service if he has actually worked for 240 days in a calendar year during the period of 12 calendar months preceding the date of his retrenchment. The petitioner, as per mandays charts Ext. PW1/G and Ext. PW1/H filed by him, has worked for 324 days with the respondents during the period of 12 calendar months preceding the date when his services were terminated in April, 2000, therefore, he can safely be held to be in continuous service as per the provisions of Section 25-B of the I.D. Act. Hence, the services of the petitioner could have been terminated only after complying with the provisions of Section 25-F of the I.D. Act.

25. The respondent admittedly has not issued any notice to the petitioner before terminating his services in April, 2000 nor wages for the period of notice were paid to her in lieu of such notice nor any compensation was paid to him and thus it is established on record that the respondent has illegally terminated the services of the petitioner in contravention of the provisions of Section 25-F of the I.D. Act.

26. The petitioner has further alleged that the respondents have retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last comer first go'.

27. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is

no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-1 wherein Roshani Devi shown at serial No. 652 was engaged on 4-7-1999, Mamta Devi shown at serial No. 648 was engaged on 6-4-2000 and Inder Singh shown at serial No. 647 was engaged on 1-1-2000 and thus they all were engaged after engagement of the petitioner in January, 1999 and before termination of his services in April, 2000 and they were junior to the petitioner. Inder Singh and Mamta Devi as per remarks in remarks column were re-engaged on compassionate ground, but no document has been produced on record by the respondents to prove that their mothers or fathers were working under the respondents and they died on duty. But even if Inder Singh and Mamta Devi are accepted to have been appointed on compassionate ground, even then Roshani Devi was not engaged on compassionate ground, therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner in January, 2000. Hence it is established on record that the respondents have retained junior to the petitioner in service while terminating his services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

28. The petitioner has also alleged that the respondents have engaged fresh hands after terminating his services in April, 2000. The petitioner in para No. 4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj in November, 2004 and Satya Devi on 27-1-2011 after terminating his services in April, 2000 but he was not given opportunity of re-employment. The respondents in reply to para No. 4, have averred that para No. 4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Hence in view of the admission of the respondents, it is also established on record that the respondents have engaged numerous workmen after termination of the services of the petitioner in April, 2000, and no opportunity of re-employment was given to him. Hence violation of Section 25-H of the I. D. Act is also proved.

29. The petitioner thus has proved on record that the respondents have terminated his services without serving one month's notice upon him or payment of wages for notice period and retrenchment compensation to him as well as in violation of the principle of 'last come first go' and also engaged fresh hand without giving opportunity of re-employment to him.

30. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 30.3.2015 after lapse of more than 15 years of termination of his services in the month of April, 2000 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

31. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record *vis- -vis* reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31.8.2015, rendered by the Writ Court in CWP No. 3587 of 2015.

Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 121/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.

- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13.3.2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3.4.2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 121/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.
- [10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in *Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017* and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.
- [11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in *Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd.*, 2016 9 SCC 431 and *Rashtriya Colliery MazdoorSangh v. Employers*, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs. 4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

32. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

33. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of his services, he approached the respondents several time

and made representations dated 5-1-2004 & 6-1-2006 Ext. PW1/D and Ext. PW1/E to the respondents to re-engage him, but he was not re-engaged which in turn proves on record that the petitioner after termination of his services kept on making requests to the respondents to re-engage him till 6-1-2006, but he was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated his services without serving one month's notice upon him or payment of wages for notice period and retrenchment compensation to him as well as in violation of the principle of 'last come first go' and also engaged fresh hand without giving opportunity of re-employment to him, the petitioner, taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

34. Hence, taking into consideration the number of working days, i.e., 404 days for which the petitioner worked with the department from January, 1999 to April, 2000 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs. 5,00,000/- is awarded as compensation to the petitioner. Hence issues No.1 and 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

35. In view of my findings returned on issues No.1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

36. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs.5,00,000/- (Rupees Five Lakh only) is awarded as compensation to the petitioner for terminating his services in in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I D Act. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

37. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 10/2017
Date of Institution : 05-1-2017
Date of Decision : 28-5-2024

Shri Manohar Lal s/o Shri Gokul Ram, r/o V.P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

“Whether alleged termination of the services of Shri Manohar Lal s/o Shri Gokul Ram, r/o V.P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. during November, 1999 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 08.06.2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during year 1999 for 146 days respectively and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of April, 1999. The respondents verbally terminated his services in the month of November, 1999 without issuance of one month's notice or payment of one month's salary in lieu of notice period to him. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D.Act. After terminating his services, the respondents have also employed fresh workers namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2001, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but he was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, he was not re-engaged. Thereafter he approached the respondents in the month of December, 1999, January, 2000, April, 2002, December, 2004, March 2005, October,

2005, January, 2006 and on 2-3-2015 to reinstate him but the respondents have shown inability to reinstate him on the ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. he made representations orally as well as in writing continuously to the respondents, but he was not re-engaged. The respondents had also retrenched 1087 workmen on 8-7-2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to him at the time of re-engagement of aforesaid workmen. He raised industrial dispute vide demand notice dated 12/2014, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute *vide* demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No.8315/2012 and the Hon'ble High Court *vide* judgment dated 20-12-2012 decided the same along-with 46 connected matters with CWP No.5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and chose has taken plea of delay in his case. The industrial dispute raised by him does not suffers from delay and laches. The act of the respondents terminating his services in November, 1999 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. he is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections qua maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar during month of April, 1999, however, it has been averred that the petitioner worked upto October, 1999 and that he had worked for 146 days only. It has been averred that the services of the petitioner were not terminated; rather he himself had left the job on his own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to him. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi in December, 2014 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 18-9-2018:—

1. Whether termination of the services of petitioner by the respondents during Nov., 1999 is/was legal and justified as alleged? . . . *OPP*.
2. If issue No.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR 1 & 2*.
4. Whether the claim petition suffers from delay and laches as alleged? . . . *OPR*.

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides himself, has examined Khyali Singh, PW2 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No. 1	: No
Issue No. 2	: Compensation
Issue No. 3	: No
Issue No. 4	: Yes
Relief.	: Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wager in April, 1999, however, it has been averred that he worked till October, 1999, but for 146 days only.

13. The petitioner has alleged that the respondents had terminated his services without issuing one month's notice to him or payment of one month's wages in lieu of notice period and that the respondents has retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services and also engaged fresh hands after termination of his services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on his own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. PW1/J and Ext. PW1/K produced by petitioner and Ext. R-1 produced by the respondents, the petitioner had worked for total 146 days from April, 1999 to October, 1999, which fact has been admitted by the petitioner.

16. The petitioner Manohar Lal, in substantiation of his claim, appeared as PW1 and has filed affidavit Ext. PW1/A in his examination-in-chief wherein he has affirmed the averments made in the petition on oath. He has also tendered copy of seniority list Ext. PW1/B, copy of another seniority list Ext. PW1/C, copy of letter dated 7-8-2014 Ext. PW1/D, copy of mandays chart Ext. PW1/E, copy of applications dated 2-4-2002, 5-10-2005 a & 2-4-2006 Ext. PW1/F, Ext. PW1/G and Ext. PW1/H, copy of mandays chart Ext. PW1/J and copy of another mandays chart Ext. PW1/K in evidence. He has been cross-examined at lengthy, but despite lengthy cross-examination, he has denied that he himself had left the job. He has feigned ignorance that the respondents have engaged the workmen written by him in his petition on compassionate ground. He has also denied that he has prepared false representations Ext. PW1/F, Ext. PW1/G and Ext. PW1/H.

17. The petitioner has also examined one Khyali Singh as PW2, who has filed affidavit Ext. PW2/A in his examination-in-chief. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1.4.1994 and retired on 30-6-2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in April, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the department had terminated his services without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after his termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in his name. The petitioner had also requested him many times to re-engage him and issue muster roll to him. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner visited the office of the respondents many times in his presence with written applications but the department did not re-engage him. In his cross-examination, he admitted that attendance of the worker who used to attend the work is marked on the muster roll. He admitted that as mandays are prepared on the basis of the muster rolls. He did not remember that the petitioner had worked w.e.f. April, 1999 to August, 1999 and October, 1999 only with the department. He has denied that the petitioner had not moved any application to him to re-engage him. He has stated that the muster roll issued by the Executive Engineer.

18. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1, muster roll Ext. R-2 (5 pages) and seniority list Ext. R-3 in evidence. In his cross-examination, he has admitted that there was no remarks in the muster roll Ext. R-2 that the petitioner had left the job himself. No notice was issued to the petitioner after his leaving the job. He did not know that the petitioner had made representations Ext. PW2/F to Ext. PW2/H to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/B and Ext. PW1/L were engaged after October, 1999. He has admitted that no muster roll was issued to the petitioner after October, 1999 and added that he himself had left the job. He

has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

19. This is entire evidence led by both the parties.

20. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that his services were terminated by the respondents. The petitioner Manohar Lal PW1 categorically has stated that his service were terminated by the respondents in November, 1999 and despite his lengthy cross-examination, he has maintained his stand. The petitioner has produced copies of applications dated 2-4-2002, 5-10-2005 and 2-4-2006 Ext. PW1/F to Ext. PW1/H moved to the respondent No. 2 on record. In these applications, the petitioner had claimed that his services were terminated and he had repeatedly requested the respondents till 2-4-2006 to re-engage him. The exhibition of all these applications was objected to on behalf of the respondents, however, the respondents have not disputed the fact that Khyali Singh PW2 was posted as supervisor in the respondents department and his statement that the petitioner had moved applications to the department and that the respondents had not issued muster roll in the name of the petitioner after his termination, has not been shattered on record. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the aforesaid applications to the department; rather he feigned ignorance about the same and therefore the evidence of the petitioner that he had moved applications Ext. PW2/F to Ext. PW2/H from the year 2002 to 2006 to the department duly corroborated by the evidence of Khyali Singh PW2, has to be accepted to be correct.

21. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, he would not have moved applications one after the another for about five years to re-engage him. Therefore the evidence of the petitioner Manohar Lal PW1 that the respondents have terminated his services duly corroborated by Khyali Singh PW2 and applications Ext. PW1/F to Ext. PW1/H, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in November, 1999 and he had not left the job as alleged by the respondents.

22. The petitioner has alleged that the respondents have terminated his services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

23. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

24. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

25. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

26. In the case in hand, the petitioner as per mandays chart Ext. PW1/E and Ext. R-1, had worked for 146 days only with the respondents which in turn proves that he had not worked for 240 days during the period of 12 calendar months preceding the date of his termination and therefore he was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating his services. Hence violation of Section 25-F of the I. D. Act is not proved.

27. The petitioner has further alleged that the respondents have retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last comer first go'.

28. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-3 wherein Roshani Devi shown at serial No. 652 was engaged on 4-7-1999, Mamta Devi shown at serial No. 648 was engaged on 6-4-2000 and Inder Singh shown at serial No. 647 was engaged on 1-1-2000. Thus Roshani Devi was engaged after engagement of the petitioner in April, 1999 and before termination of his services in November, 1999 and she was junior to the petitioner and she was not engaged on compassionate ground, therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner in November, 1999. Hence it is established on record that the respondents have retained junior to the petitioner in service while terminating his services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

29. The petitioner has also alleged that the respondents have engaged fresh hands after terminating his services in November, 1999. The petitioner in para No. 4 of claim petition has

alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on November, 2004 and Satya Devi on 27-1-2011 after terminating his services but he was not given opportunity of re-engagement. The respondents in reply to para No. 4, have averred that para No.4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Furthermore, the petitioner has placed seniority list Ext. PW1/L of 834 workers *w.e.f.* 01-01-2000 to 31-12-2000 on record. The respondents have not disputed that the seniority list Ext. PW1/L. It would be evident from the perusal of the seniority list that the respondents have engaged all the 834 workmen of different categories including “beldars” from 1-1-2000 onward. Thus in view of aforesaid admission of respondents and the seniority list Ext. PW1/L, it is also established on record that the respondents have engaged numerous beldars after termination of the services of the petitioner in November, 1999, but admittedly, no opportunity of re-employment was given to him. Hence violation of Section 25-H of the I. D. Act is also proved.

30. The petitioner thus has proved on record that the respondents have terminated his services in violation of the principle of ‘last comer first go’ and engaged fresh hand without giving opportunity of re-employment to him.

31. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 8.6.2015 after lapse of more than 15 years of termination of his services in the month of November, 1999 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

32. Hon’ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record *vis- -vis* reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31-8-2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 121/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.
- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the

Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13-3-2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3-4-2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibusjurasubveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 121/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award

compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.

[10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in *Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017* and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.

[11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in *Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd.*, 2016 9 SCC 431 and *Rashtriya Colliery MazdoorSangh v. Employers*, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs. 4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

33. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

34. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of his services, he approached the respondents several time and moved applications to the respondents to re-engage her, but he was not re-engaged and his evidence to this effect has been corroborated by Khyali Singh PW2 as well as applications Ext. PW1/F moved by him on 2-4-2002, Ext. PW1/G moved on 5-10-2005 and Ext. PW1/H moved on 2-4-2006, which in turn proves on record that the petitioner after termination of his services kept on making requests to the respondents to re-engage him till 2.4.2006, but he was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of his services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

35. Hence, taking into consideration the number of working days i.e. 146 days for which the petitioner worked with the department from April, 1999 to October, 1999 and facts and

circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs.4,00,000/- is awarded as compensation to the petitioner. Hence issues No. 1 and 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

36. In view of my findings returned on issues No.1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

37. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs.4,00,000/- (Rupees Four Lakh Only) is awarded as compensation to the petitioner for terminating his services in violation the principle of 'last come first go' and engaging fresh hands after termination of his services without giving an opportunity to him for re-employment. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 606/2016

Date of Institution : 26-8-2016

Date of Decision : 28-5-2024

Shri Rajesh Kumar s/o Shri Gulab Singh, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat,
District Mandi, H.P. . . . *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. US Club, Shimla, District Shimla, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.

. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D. Act') to this court for adjudication:—

“Whether alleged termination of services of Sh. Rajesh Kumar s/o Sh. Gulab Singh Vill. Kapahi, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. during 11/1999 by (1) the Engineer-in Chief HPPWD, Nirman Bhawan, Shimla-2, (2) the Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 4/1999 to 11/1999, only for 199 days, and raised his industrial dispute vide demand notice dated 8-6-2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of April, 1999. The respondents verbally terminated his services in the month of November, 1999 without issuance of one month's notice or payment of one month's salary in lieu of notice period to him. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D. Act. After terminating his services, the respondents have also employed fresh workers namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2001, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but he was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, he was not re-engaged. Thereafter he approached the respondents in the month of December, 1999, January, 2000, April, 2002, December, 2004, March 2005, October, 2005, January, 2006 and on 2-3-2015 to reinstate him but the respondents have shown inability to reinstate him on the ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. He made representations orally as well as in writing continuously to the respondents, but he was not re-engaged. The respondents had also retrenched 1087 workmen on 8-7-2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award

passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to him at the time of re-engagement of aforesaid workmen. he raised industrial dispute vide demand notice dated 8-6-2015, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute vide demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No.8315/2012 and the Hon'ble High Court vide judgment dated 20-12-2012 decided the same along-with 46 connected matters with CWP No.5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and choose has taken plea of delay in his case. The industrial dispute raised by him does not suffers from delay and laches. The act of the respondents terminating his services in November, 1999 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. He is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections qua maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar during month of April, 1999 and he worked upto November, 1999, but for 199 days only. It has been averred that the services of the petitioner were not terminated; rather he himself had left the job on his own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to him. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi on 8-6-2015 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 09-04-2019:—

1. Whether termination of the services of petitioner by the respondents during Nov., 1999 is/was illegal and unjustified as alleged? . . . *OPP.*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? OPR 1&2

4. Whether the claim petition suffers from delay and laches as alleged? . . . OPR.

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides himself, has examined Khyali Singh, PW2 and YogeshChander, PW3 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1 : Yes

Issue No.2 : Compensation

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1,2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wagger in April, 1999 and he worked as such till November, 1999, but for 199 days only.

13. The petitioner has alleged that the respondents had terminated his services without issuing one month's notice to him or payment of one month's wages in lieu of notice period and that the respondents has retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services and also engaged fresh hands after termination of his services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on his own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. R-1 placed on record by the respondent, the petitioner had worked for total 199 days from April, 1999 to November, 1999.

16. The petitioner Rajesh Kumar, in substantiation of his claim, appeared as PW1 and has filed affidavit Ext. PW1/A in his examination-in-chief wherein he has affirmed the averments

made in the petition on oath. He has also tendered seniority list Ext. PW1/B, copy of application dated 6-1-2006 Mark-A, copy of application dated 5-1-2004 Mark-B, copy of application dated 22-1-2002 Mark-C, copy and copy of mandays chart Mark-D in evidence. He has been cross-examined at lengthy, but despite lengthy cross-examination, he has denied that he himself had left the job. He has also denied that the department had not retained workmen junior to him in service nor the fresh hands were engaged by the respondents. He has feigned ignorance that the respondents have engaged the workmen on compassionate ground or as per the orders of the court. He has also denied that he was not re-engaged as he himself had left the job.

17. The petitioner has also examined one Khyali Singh as PW2, who has filed affidavit Ext. PW2/A in his examination-in-chief. He has also proved copy of application dated 6.1.2006 Ext. PW2/B, copy of application dated 5-1-2004 Ext. PW2/C and copy of application dated 22-1-2002 Ext. PW2/D. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1-4-1994 and retired on 30-6-2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in April, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the department had terminated his services in November, 1999 without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after his termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in his name. The petitioner had also requested him many times to re-engage him and issue muster roll to her, but he had shown inability to re-engage him. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner visited the office of the respondents 7-8 years in his presence with written applications but the department did not re-engage him. In his cross-examination, he has stated that he retired as supervisor in the year 2010. He has denied that the petitioner had not made any correspondence with the department to re-engage him. The respondents had engaged about 70 beldars in the year 1999 on daily wage basis and their attendance was marked on muster roll. He has denied that some of them had left the job on their own and added that the Executive Engineer had not issued muster rolls in their names.

18. Yogesh Chander PW3 posted as SDO HPPWD Dharampur, District Mandi, H.P. has stated that he has brought the record *i.e.* muster rolls pertaining to the petitioner. He has examined the original muster rolls and there is no entry in the same that the petitioner had left the job at his own.

19. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1 and seniority list Ext. R-2 in evidence. In his cross-examination, he has admitted that there was no remarks in the mandays chart Ext. R-1 that the petitioner has left the job himself. No notice was issued to the petitioner after his leaving the job. He did not know that the petitioner had made representations Ext. PW2/B to Ext. PW2/D to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/B were engaged after November, 1999. He has admitted that no muster roll was issued to the petitioner after November, 1999 and added that he himself had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

20. This is entire evidence led by both the parties.

21. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that his services were terminated by the respondents. The petitioner Rajesh Kumar PW1 categorically has stated that his service were terminated by the respondents in November, 1999 and despite his lengthy cross-examination, he has maintained his stand. The petitioner has filed copy of application dated 6-1-2006 Ext. PW2/B, copy of application dated 5-1-2004 Ext. PW2/C and copy of application dated 22.1.2002 Ext. PW2/D moved to the respondent No.2 on record. In these applications, the petitioner had claimed that his services were terminated and he had repeatedly requested the respondents till 6-1-2006 to re-engage him. All these applications have been proved by Khyali Singh PW2 on record. The exhibition of all these applications was objected to on behalf of the respondents, however, the respondents have not disputed the fact that Khyali Singh PW2 was posted as supervisor in the respondents department and his statement that the petitioner had moved applications to the department and that the respondents had not issued muster roll in the name of the petitioner after his termination, has not been shattered on record. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the aforesaid applications to the department; rather he feigned ignorance about the same and therefore the evidence of the petitioner that he had moved applications Ext. PW2/B to Ext. PW2/D from the year 2002 to 2006 to the respondents duly corroborated by the evidence of Khyali Singh PW2, has to be accepted to be correct.

22. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, he would not have moved applications one after the another for about five years to re-engage him. Therefore the evidence of the petitioner Rajesh Kumar PW1 that the respondents have terminated his services in November, 1999 duly corroborated by Khyali Singh PW2 and applications Ext. PW2/B to Ext. PW2/D, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in November, 1999 and he had not left the job as alleged by the respondents.

23. The petitioner has alleged that the respondents have terminated his services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

24. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of

the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

26. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

27. In the case in hand, the petitioner as per mandays chart Ext. PW1/C and Ext. R-1, had worked for 199 days only with the respondents which in turn proves that he had not worked for 240 days during the period of 12 calendar months preceding the date of his termination and therefore he was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating his services. Hence violation of Section 25-F of the I. D. Act is not proved.

28. The petitioner has further alleged that the respondents have retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last come first go'.

29. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-2 wherein Roshani Devi shown at serial No. 652 was engaged on 4.7.1999, Mamta Devi shown at serial No.648 was engaged on 6.4.2000 and Inder Singh shown at serial No.647 was engaged on 1.1.2000 and thus Roshani Devi was engaged after engagement of the petitioner in April, 1999 and before termination of his services in November, 1999 and she was junior to the petitioner and she was not engaged on compassionate ground, therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner in November, 1999. Hence it is established on record that the respondents have retained junior to the petitioner in service while terminating his services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

30. The petitioner has also alleged that the respondents have engaged fresh hands after terminating his services in November, 1999. The petitioner in para No.4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on November, 2004 and Satya Devi on 27-1-2011 after terminating his services in November, 1999 but he was not given opportunity of re-engagement. The respondents in reply to para No.4, have averred that para No.4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Furthermore, the petitioner has placed seniority list Ext. PW1/B of 834 workers *w.e.f.* 01-01-2000 to 31-12-2000 on record. The respondents have not disputed that the seniority list Ext. PW1/B. It would be evident

from the perusal of the seniority list that the respondents have engaged all the 834 workmen of different categories including “beldars” from 1-1-2000 onward. Thus in view of aforesaid admission of respondents and the seniority list Ext. PW1/B, it is also established on record that the respondents have engaged numerous beldars after termination of the services of the petitioner in November, 1999, but admittedly, no opportunity of re-employment was given to him. Hence violation of Section 25-H of the I. D. Act is also proved.

31. The petitioner thus has proved on record that the respondents have terminated his services in violation of the principle of ‘last comer first go’ and engaged fresh hand without giving opportunity of re-employment to him.

32. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 8.6.2015 after lapse of more than 15 years of termination of his services in the month of November, 1999 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

33. Hon’ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record vis- -vis reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31.8.2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 12 1/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.
- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of

limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13-3-2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3-4-2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 12 1/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.
- [10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017 and other connected matters, decided on 11th December, 2017, whereby

it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.

- [11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd., 2016 9 SCC 431 and Rashtriya Colliery MazdoorSangh v. Employers, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs.4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

34. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

35. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of his services, he approached the respondents several time and moved applications to the respondents to re-engage him, but he was not re-engaged and his evidence to this effect has been corroborated by Khyali Singh PW2 as well as applications Ext. PW2/B moved by him on 6.1.2006, Ext. PW2/C moved on 5-1-2004 and Ext. PW2/D moved on 22-1-2002 which in turn proves on record that the petitioner after termination of his services kept on making requests to the respondents to re-engage him till 6-1-2006, but he was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of his services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

36. Hence, taking into consideration the number of working days *i.e.* 199 days for which the petitioner worked with the department from April, 1999 to November, 1999 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs.4,00,000/- is awarded as compensation to the petitioner. Hence issues No.1 and 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

37. In view of my findings returned on issues No. 1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

38. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs. 4,00,000/- (Rupees Four Lakh Only) is awarded as compensation to the petitioner for terminating his services in violation the principle of 'last come first go' and engaging fresh hands after termination of his services without giving an opportunity to him for re-employment. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 667/2016

Date of Institution : 17-9-2016

Date of Decision : 28-5-2024

Smt. Godan Devi w/o Shri Banka Ram, r/o Village & P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. . . . *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.

. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

“Whether alleged termination of services of Smt. Godan Devi W/o Sh. Banka Ram Vill. & PO Sari, Tehsil Sarkaghat, Distt. Mandi, H.P. during 8/1999 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who has worked as beldar on daily wages basis during the 3/1999 to 8/1999 only for 155 days, and has raised her industrial dispute vide demand notice dated 30-3-2015 after delay of more 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that she was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of March, 1999. The respondents verbally terminated her services in the month of August, 1999 without issuance of one month's notice or payment of one month's salary in lieu of notice period to her. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D.Act. After terminating her services, the respondents have also employed fresh workers namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2001, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but she was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, she was not re-engaged. Thereafter she approached the respondents in the month of December, 1999, January, 2000, October, 2004, March 2005, September, 2005 and January, 2006 to reinstate her but the respondents have shown inability to reinstate her on the ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. She made representations orally as well as in writing continuously to the respondents, but she was not re-engaged. The respondents had also retrenched 1087 workmen on 8-7-2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to her at the time of re-engagement of aforesaid workmen. She raised industrial dispute vide demand notice dated 30-6-2015, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute vide demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP

No.8315/2012 and the Hon'ble High Court vide judgment dated 20-12-2012 decided the same along-with 46 connected matters with CWP No.5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and choose has taken plea of delay in her case. The industrial dispute raised by her does not suffers from delay and laches. The act of the respondents terminating her services in August, 1999 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. She is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections qua maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar during month of March, 1999 and she worked upto August, 1999, but for 155 days only. It has been averred that the services of the petitioner were not terminated; rather she herself had left the job on her own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to her. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi on 30-6-2015 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 09.04.2019:—

1. Whether termination of the services of petitioner by the respondents during August, 1999 is/was illegal and unjustified as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? OPR 1&2
4. Whether the claim petition suffers from delay and laches as alleged? . . . *OPR*.
Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides herself, has examined Khyali Singh, PW2 and Yogesh Chander, PW3 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	: Yes
Issue No.2	: Compensation
Issue No.3	: No
Issue No.4	: Yes
Relief.	: Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1,2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wager in March, 1999 and she worked as such till August 1999, but for 155 days only.

13. The petitioner has alleged that the respondents had terminated her services without issuing one month's notice to her or payment of one month's wages in lieu of notice period and that the respondents has retained junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services and also engaged fresh hands after termination of her services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on her own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. PW1/B produced by petitioner and Ext. R-1 produced on record by the respondent, the petitioner had worked for total 155 days from March, 1999 to August, 1999, which fact has been admitted by the petitioner.

16. The petitioner Godan Devi, in substantiation of her claim, appeared as PW1 and has filed affidavit Ext. PW1/A in her examination-in-chief wherein she has affirmed the averments made in the petition on oath. She has also tendered seniority list Ext. PW1/B, copy of application dated 6-1-2006 Mark-X, copy of application dated 5-1-2004 Mark-Y, copy of application dated 22-1-2002 Mark-Z and copy of mandays chart Ext. PW1/C in evidence. She has been cross-examined at lengthy, but despite lengthy cross-examination, she has denied that she herself had left the job. She has also denied that the department had not retained workmen junior to her in service nor the fresh hands were engaged by the respondents. She has feigned ignorance that the

respondents have engaged the workmen on compassionate ground or as per the orders of the court. She has also denied that she was not re-engaged as she herself had left the job.

17. The petitioner has also examined one Khyali Singh as PW2, who has filed affidavit Ext. PW2/A in his examination-in-chief. He has also proved copy of application dated 6-1-2006 Ext. PW2/B, copy of letter dated 5-1-2004 Ext. PW2/C and copy of application dated 22-1-2006 Ext. PW2/D. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1-4-1994 and retired on 30-6-2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in March, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the department had terminated her services in August, 1999 without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after her termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in her name. The petitioner had also requested him many times to re-engage her and issue muster roll to her, but he had shown inability to re-engage her. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner visited the office of the respondents 7-8 years in his presence with written applications but the department did not re-engage her. In his cross-examination, he has stated that he retired as supervisor in the year 2010. He has denied that the petitioner had not made any correspondence with the department to re-engage her. The respondents had engaged about 70 beldars in the year 1999 and their attendance on marked in muster roll. He has denied that some of them had left the job on their own and added that the Executive Engineer had not issued muster rolls in their names.

18. Yogesh Chander PW3 posted as SDO HPPWD Dharampur, District Mandi, H.P. has stated that he has brought the record i.e. muster rolls pertaining to the petitioner. He has examined the original muster rolls and there is no entry in the same that the petitioner had left the job at her own.

19. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1 and seniority list Ext. R-2 in evidence. In his cross-examination, he has admitted that there was no remarks in the mandays chart Ext. R-1 that the petitioner has left the job herself. No notice was issued to the petitioner after her leaving the job. He did not know that the petitioner had made representations Ext. PW2/B to Ext. PW2/D to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/B were engaged after August, 1999. He has admitted that no muster roll was issued to the petitioner and added that she herself had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

20. This is entire evidence led by both the parties.

21. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that her services were terminated by the respondents. The petitioner Godan Devi PW1 categorically has stated that her service were terminated by the respondents in August, 1999 and despite her lengthy cross-examination, she has maintained her stand. The petitioner has filed application dated

6-1-2006 Ext. PW2/B, copy of application dated 5-1-2004 Ext. PW2/C and copy of application dated 22-1-2002 Ext. PW2/D moved to the respondent No. 2 on record. In these applications, the petitioner had claimed that her services were terminated and she repeatedly requested the respondents till 6.1.2006 to re-engage her. All these applications have been proved by Khyali Singh PW2 on record. The exhibition of all these applications was objected to on behalf of the respondents, however, the respondents have not disputed the fact that Khyali Singh PW2 was posted as supervisor in the respondents department and his statement that the petitioner had moved applications to the department and that the respondents had not issued muster roll in the name of the petitioner after her termination, has not been shattered on record. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the aforesaid applications to the department; rather he feigned ignorance about the same and therefore the evidence of the petitioner that she had moved applications Ext. PW2/B to Ext. PW2/D from the year 2002 to 2006 to the department duly corroborated by the evidence of Khyali Singh PW2, has to be accepted to be correct.

22. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, she would not have moved applications one after the another for about five years to re-engage her. Therefore the evidence of the petitioner Godan Devi PW1 that the respondents have terminated her services in August, 1999 duly corroborated by Khyali Singh PW2 and applications Ext. PW2/B to Ext. PW2/D, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in August, 1999 and she had not left the job as alleged by the respondents.

23. The petitioner has alleged that the respondents have terminated her services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

24. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

26. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

27. In the case in hand, the petitioner as per mandays chart Ext. PW1/C and Ext. R-1, had worked for 155 days only with the respondents which in turn proves that she had not worked for 240 days during the period of 12 calendar months preceding the date of her termination and therefore she was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating her services. Hence violation of Section 25-F of the I. D. Act is not proved.

28. The petitioner has further alleged that the respondents have retained junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services in violation of the principle of 'last comer first go'.

29. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-2 wherein Roshani Devi shown at serial No. 652 was engaged on 4-7-1999, Mamta Devi shown at serial No. 648 was engaged on 6-4-2000 and Inder Singh shown at serial No. 647 was engaged on 1-1-2000 and thus Roshani Devi was engaged after engagement of the petitioner in March, 1999 and before termination of her services in August, 1999 and she was junior to the petitioner and she was not engaged on compassionate ground therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner in August, 1999. Hence it is established on record that the respondents have retained junior to the petitioner in service while terminating her services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

30. The petitioner has also alleged that the respondents have engaged fresh hands after terminating her services in August, 1999. The petitioner in para No. 4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on November, 2004 and Satya Devi on 27-1-2011 after terminating her services in August, 1999 but she was not given opportunity of re-engagement. The respondents in reply to para No. 4, have averred that para No. 4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Thus in view of aforesaid admission of respondents, it is also established on record that the respondents have engaged numerous beldars after termination of the services of the petitioner in August, 1999, but admittedly, no opportunity of re-employment was given to her. Hence violation of Section 25-H of the I. D. Act is also proved.

31. The petitioner thus has proved on record that the respondents have terminated her services in violation of the principle of 'last comer first go' and engaged fresh hand without giving opportunity of re-employment to her.

32. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 30.3.2015 after lapse of more than 16 years of termination

of her services in the month of August, 1999 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

33. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record vis- -vis reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31.8.2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 121/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.
- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or

allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13-3-2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3-4-2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 12 1/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.
- [10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017 and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.
- [11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in Workmen Rastriya Colliery Mazdoor Sangh v. Bharat Coking Coal Ltd., 2016 9 SCC 431 and Rashtriya Colliery Mazdoor Sangh v. Employers, 2017 1 SCC 264, has dealt with the issue at hand and

has proceeded to award compensation to the tune of Rs. 4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

34. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

35. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of her services, she approached the respondents several time and moved applications to the respondents to re-engage her, but she was not re-engaged and her evidence to this effect has been corroborated by Khyali Singh PW2 as well as applications Ext. PW2/B moved by her on 6-1-2006, Ext. PW2/C moved on 5-1-2004 and Ext. PW2/D moved on 22-1-2002 which in turn proves on record that the petitioner after termination of her services kept on making requests to the respondents to re-engage her till 6.1.2006, but she was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of her services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

36. Hence, taking into consideration the number of working days *i.e.* 155 days for which the petitioner worked with the department from January, 1999 to August, 1999 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs.4,00,000/- is awarded as compensation to the petitioner. Hence issues No.1 and 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

37. In view of my findings returned on issues No. 1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

38. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs. 4,00,000/- (Rupees Four Lakh Only) is awarded as compensation to the petitioner for terminating her services in violation the principle of 'last come first go' and engaging fresh hands after termination of her services without giving an opportunity to her for re-employment. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts

and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 566/2016

Date of Institution : 24-8-2016

Date of Decision : 28-5-2024

Shri Jeevan Lal s/o Shri Keshav Ram, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat,
District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.
. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:-

“Whether alleged termination of services of Sh. Jeevan Lal s/o Sh. Keshav Ram Vill. Kapahi, PO Sari, Tehsil, Sarkaghat, Distt. Mandi, H.P. during 6/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla (2) the Executive Engineer, HPPWD Division

Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 01/1999 to 6/1999, only for 71 days, and has raised his industrial dispute vide demand notice dated 8.6.2015 after 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of January, 1999. The respondents verbally terminated his services in the month of June, 1999 without issuance of one month's notice or payment of one month's salary in lieu of notice period to him. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D. Act. After terminating his services, the respondents have also employed fresh workers namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2001, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but he was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, he was not re-engaged. Thereafter he approached the respondents in the month of January, 2000, December, 2004, June, 2005, October, 2005 and January, 2006 to reinstate him but the respondents have shown inability to reinstate him on the ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. He made representations orally as well as in writing continuously to the respondents, but he was not re-engaged. The respondents had also retrenched 1087 workmen on 8-7-2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to him at the time of re-engagement of aforesaid workmen. He raised industrial dispute vide demand notice dated 8.6.2015, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute *vide* demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No. 8315/2012 and the Hon'ble High Court *vide* judgment dated 20.12.2012 decided the same along-with 46 connected matters with CWP No. 5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and chose has taken plea of delay in his case. The industrial dispute raised by him does not suffers from delay and laches. The act of the respondents terminating his services in November, 1999 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. he is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections qua maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar in the year 1999, however, it has been averred that he was engaged in April, 1999 and he worked upto June, 1999, but for 71 days only. It has been averred that the services of the petitioner were not terminated; rather he himself had left the job on his own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to him. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi on 8-6-2015 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 9.4.2019:—

1. Whether termination of the services of petitioner by the respondents during June, 1999 is/was illegal and unjustified as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR* 1 & 2.
4. Whether the claim petition suffers from the vice of delay and laches as alleged? . . . *OPR*.

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides himself, has examined Khyali Singh, PW2 and Yogesh Chander, PW3 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:-

Issue No.1 : Yes

Issue No.2 : Compensation

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1,2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wager in the year 1999, however, they have averred that the petitioner was engaged in April, 1999 and worked as such till June, 1999, but for 71 days only, which fact has been admitted by the petitioner Jeevan Lal (PW1).

13. The petitioner has alleged that the respondents had terminated his services without issuing one month's notice to him or payment of one month's wages in lieu of notice period and that the respondents has retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services and also engaged fresh hands after termination of his services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on his own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. R-1 placed on record by the respondents, the petitioner had worked for total 71 days from April, 1999 to June, 1999.

16. The petitioner Jeevan Lal, in substantiation of his claim, appeared as PW1 and has filed affidavit Ext. PW1/A in his examination-in-chief wherein he has affirmed the averments made in the petition on oath. He has also tendered seniority list Ext. PW1/B, copy of letter dated 22-1-2002 Ext. PW1/C, copy of letter dated 5-1-2004 Ext. PW1/D, copy of letter dated 6-1-2006 Ext. PW1/E and copy of letter(wrongly written muster rolls) dated 14-11-2014 Ext. PW1/F in evidence. He has been cross-examined at lengthy, but despite lengthy cross-examination, he has denied that he himself had left the job. He has also denied that he was not re-engaged as he himself had left the job.

17. The petitioner has also examined one Khyali Singh as PW2, who has filed affidavit Ext. PW2/A in his examination-in-chief. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1.4.1994 and retired on 30.6.2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in January, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the

department had terminated his services in June, 1999 without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after his termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in his name. The petitioner had also requested him many times to re-engage him and issue muster roll to her, but he had shown inability to re-engage him. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner visited the office of the respondents many times in his presence with written applications but the department did not re-engage him. In his cross-examination, he has stated that he retired as supervisor in the year 2010. He has denied that the petitioner had not made any correspondence with the department to re-engage him. The respondents had engaged about 70 beldars in the year 1999 on daily wages and their attendance was marked on muster roll. He has denied that some of them had left the job on their own and added that the Executive Engineer had not issued muster rolls in their names.

18. Yogesh Chander PW3 posted as SDO HPPWD Dharampur, District Mandi, H.P. has stated that he has brought the record i.e. muster rolls pertaining to the petitioner. He has examined the original muster rolls and there is no entry in the same that the petitioner had left the job at his own.

19. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1 and seniority list Ext. R-2 in evidence. In his cross-examination, he has admitted that there was no remarks in the mandays chart Ext. R-1 that the petitioner has left the job himself. No notice was issued to the petitioner after his leaving the job. He did not know that the petitioner had made representations Ext. PW1/C to Ext. PW1/E to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/B were engaged after August, 1999. He has admitted that no muster roll was issued to the petitioner after June, 1999 and added that he himself had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

20. This is entire evidence led by both the parties.

21. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that his services were terminated by the respondents. The petitioner Jeevan Lal PW1 categorically has stated that his service were terminated by the respondents in June, 1999 and despite his lengthy cross-examination, he has maintained his stand. The petitioner has tendered copy of letter dated 22-1-2002 Ext. PW1/C, copy of letter dated 5-1-2004 Ext. PW1/D and copy of letter dated 6-1-2006 Ext. PW1/E moved to the respondent No. 2 on record. In these applications, the petitioner had claimed that his services were terminated and he had repeatedly requested the respondents till 6.1.2006 to re-engage him. All these applications have been proved by the petitioner PW1 on record. The exhibition of all these applications was objected to on behalf of the respondents, however, the respondents have not disputed the fact that Khyali Singh PW2 was posted as supervisor in the respondents department and his statement that the petitioner had moved applications to the department and that the respondents had not issued muster roll in the name of the petitioner after his termination, has not been shattered on record. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the aforesaid applications to the department; rather he feigned ignorance about the same and

therefore the evidence of the petitioner that he had moved applications Ext. PW1/C to Ext. PW1/E to the respondents duly corroborated by the evidence of Khyali Singh PW2, has to be accepted to be correct.

22. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, he would not have moved applications one after the another for about five years to re-engage him. Therefore the evidence of the petitioner Jeevan Lal PW1 that the respondents have terminated his services in June, 1999 duly corroborated by Khyali Singh PW2 and applications Ext. PW1/C to Ext. PW1/E, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in June, 1999 and he had not left the job as alleged by the respondents.

23. The petitioner has alleged that the respondents have terminated his services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

24. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

26. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

27. In the case in hand, the petitioner as per mandays chart Ext. R-1, had worked for 71 days only with the respondents which in turn proves that he had not worked for 240 days

during the period of 12 calendar months preceding the date of his termination and therefore he was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating his services. Hence violation of Section 25-F of the I. D. Act is not proved.

28. The petitioner has further alleged that the respondents have retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last comer first go'.

29. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the date of engagement has not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act. As per seniority list Ext. R-2 placed on record by the respondents, Roshani Devi (serial No.652) was engaged on 4.7.1999, Mamta Devi (serial No.648) was engaged on 6.4.2000 and Inder Singh (serial No.647) was engaged on 1.1.2000 and thus they all were engaged after termination of the services of the petitioner in June, 1999. However, Shashi Lal shown at serial No.646 in seniority list Ext. R-2, was engaged on 6.4.1999 and thus he was junior to the petitioner and was retained in service. Hence, it is established on record that the respondents have retained junior to the petitioner in service while terminating his services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

30. The petitioner has also alleged that the respondents have engaged fresh hands after terminating his services in June, 1999. The petitioner in para No.4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on November, 2004 and Satya Devi on 27-1-2011 after terminating his services in January, 2000 but he was not given opportunity of re-engagement. The respondents in reply to para No. 4, have averred that para No.4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Furthermore, the petitioner has placed seniority list Ext. PW1/B of 834 workers *w.e.f.* 01-01-2000 to 31-12-2000 on record. The respondents have not disputed that the seniority list Ext. PW1/B. It would be evident from the perusal of the seniority list that the respondents have engaged all the 834 workmen of different categories including "beldars" from 1-1-2000 onward. Thus in view of aforesaid admission of respondents and the seniority list Ext. PW1/B, it is also established on record that the respondents have engaged numerous beldars after termination of the services of the petitioner in June, 1999, but admittedly, no opportunity of re-employment was given to him. Hence violation of Section 25-H of the I. D. Act is also proved.

31. The petitioner thus has proved on record that the respondents have terminated his services in violation of the principle of 'last comer first go' and engaged fresh hands without giving opportunity of re-employment to him.

32. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 8.6.2015 after lapse of more than 15 years of termination of his services in the month of June, 1999 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

33. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record *vis-vis* reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31.8.2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 121/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.
- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC

588. Similar view has been taken by this Court in *GirjaNand v. State of Himachal Pradesh & Others*, CWP No. 93 of 2019 decided on 13-3-2019; *Smt. Sumfali Devi v. State of Himachal Pradesh* and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; *The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal*, LPA No. 27 of 2019 decided on 3-4-2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibusjurasubveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 121/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.
- [10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in *Sh. Daulat Ram v. The Executive Engineer, HPPWD*, CWP No. 1887 of 2017 and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.
- [11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in *Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd.*, 2016 9 SCC 431 and *Rashtriya Colliery MazdoorSangh v. Employers*, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs.4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

34. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it

is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

35. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of his services, he approached the respondents several time and moved applications to the respondents to re-engage him, but he was not re-engaged and his evidence to this effect has been corroborated by Khyali Singh PW2 as well as applications Ext. PW1/C moved by him on 22-1-2002, Ext. PW1/D moved on 5-1-2004 and Ext. PW1/E moved on 6-1-2006, which in turn proves on record that the petitioner after termination of his services kept on making requests to the respondents to re-engage him till 6-1-2006, but he was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of his services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

36. Hence, taking into consideration the number of working days, i.e., 71 days for which the petitioner worked with the department from April, 1999 to June, 1999 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs.3,00,000/- is awarded as compensation to the petitioner. Hence issues No.1 and 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

37. In view of my findings returned on issues No.1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

38. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs.3,00,000/- (Rupees three Lakh Only) is awarded as compensation to the petitioner for terminating his services in violation the principle of 'last come first go' and engaging fresh hands after termination of his services without giving an opportunity to him for re-employment. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-

(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 11/2017

Date of Institution : 05.1.2017

Date of Decision : 28.5.2024

Shri Vipin Kumar s/o Shri Jagdish Narayan, r/o Village Kapahi, P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

“Whether the alleged termination of the services of Shri Vipin Kumar s/o Shri Jagdish Narayan, r/o Village Kapahi, P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. during August, 1999 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 05-06-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during year 1999 for 94 days respectively and delay of

more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of May, 1999. The respondents verbally terminated his services in the month of August, 1999 without issuance of one month's notice or payment of one month's salary in lieu of notice period to him. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D. Act. After terminating his services, the respondents have also employed fresh workers namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2001, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but he was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, he was not re-engaged. Thereafter he approached the respondents in the month of December, 1999, January, 2000, April, 2002, December, 2004, March 2005, October 2005, January, 2006 and 2-3-2015 to reinstate him but the respondents have shown inability to reinstate him on the ground that the surplus workmen of Dharampur Division were being retrenched and process for retrenchment was continuing. He made representations orally as well as in writing continuously to the respondents, but he was not re-engaged. The respondents had also retrenched 1087 workmen on 8-7-2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to him at the time of re-engagement of aforesaid workmen. He raised industrial dispute vide demand notice in December, 2015, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute vide demand notice dated 12.5.2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No. 8315/2012 and the Hon'ble High Court vide judgment dated 20-12-2012 decided the same along-with 46 connected matters with CWP No. 5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and choose has taken plea of delay in his case. The industrial dispute raised by him does not suffer from delay and laches. The act of the respondents terminating his services in August, 1999 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. He is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections qua maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar during month of May, 1999 and he worked upto August, 1999, but for 94 days only. It has been averred that the services of the petitioner were not terminated; rather he himself had left the job on his own sweet will and therefore, there was no

question of issuance of notice or to pay wages in lieu of notice period to him. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi in December, 2014 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 18-9-2018:—

1. Whether termination of the services of petitioner by the respondents during August, 1999 is/was legal and justified as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR* 1&2.
4. Whether the claim petition suffers from delay and laches as alleged? . . . *OPR*.
Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides himself, has examined Khyali Singh, PW2 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1 : No

Issue No.2 : Compensation

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS*Issues No. 1,2 and 4*

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wager in May, 1999 and he worked as such till August, 1999, but for 94 days only.

13. The petitioner has alleged that the respondents had terminated his services without issuing one month's notice to him or payment of one month's wages in lieu of notice period and that the respondents has retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services and also engaged fresh hands after termination of his services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on his own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. PW1/C produced by the petitioner and Ext. R-1 produced on record by the respondents, the petitioner had worked for total 94 days from May, 1999 to August, 1999.

16. The petitioner Vipin Kumar, in substantiation of his claim, appeared as PW1 and has filed affidavit Ext. PW1/A in his examination-in-chief wherein he has affirmed the averments made in the petition on oath. He has also tendered copy of seniority list Ext. PW1/B, copy of seniority list in Hindi Ext. PW1/C, copy of UPC receipts Ext. PW1/D and Ext. PW1/E, copy of representation Ext. PW1/F, copy of another representation dated 6.1.2006 Ext. PW1/G, copy of letter of seniority list Ext. PW1/H, copy of seniority list Ext. PW1/J and copy of mandays Ext. PW1/K in evidence. He has been cross-examined at lengthy, but despite lengthy cross-examination, he has denied that he himself had left the job. He has admitted that as per Ext. PW1/K he had worked for 29 days in May, 30 days in June, 19 days in July and 16 days in August, 1999 which comes to 94 days in total. He has feigned ignorance that the workmen named in para No.3 of the petition by him have engaged by the respondents on compassionate ground. He has denied that he has not written Ext. PW1/F and Ext. PW1/G. He, however, has admitted that he cannot produced the original record of Ext. PW1/F and Ext. PW1/G, but added that it must be with the department.

17. The petitioner has also examined one Khyali Singh as PW2, who has filed affidavit Ext. PW2/A in his examination-in-chief. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1-4-1994 and retired on 30-6-2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in May, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the department had terminated his services without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after his termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in his name. The petitioner had also requested him many times to re-engage him and issue muster roll to him, but he

had shown inability to re-engage him. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner visited the office of the respondents many times in his presence with written applications but the department did not re-engage him. In his cross-examination, he has denied that the petitioner had not moved any application to him to re-engage him. He has stated that the muster roll is issued by the Executive Engineer.

18. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1, muster rolls (four pages) Ext. R-2 and seniority list Ext. R-3 in evidence. In his cross-examination, he has admitted that there was no remarks in the mandays chart Ext. PW1/J and muster rolls Ext. R-2 that the petitioner has left the job himself. No notice was issued to the petitioner after his leaving the job. He did not know that the petitioner had made representations Ext. PW1/F and Ext. PW1/G to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/L were engaged after August, 1999. He has admitted that no muster roll was issued to the petitioner and added that he himself had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

19. This is entire evidence led by both the parties.

20. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that his services were terminated by the respondents. The petitioner Manohar Lal PW1 categorically has stated that his service were terminated by the respondents in August, 1999 and despite his lengthy cross-examination, he has maintained his stand. The petitioner has produced copies of applications dated 22-1-2002 and 6.1.2006 Ext. PW1/F and Ext. PW1/G moved to the respondent No.2 on record. In these applications, the petitioner had claimed that his services were terminated and he had repeatedly requested the respondents till 6-1-2006 to re-engage him. The exhibition of all these applications was objected to on behalf of the respondents, however, the respondents have not disputed the fact that Khyali Singh PW2 was posted as supervisor in the respondents department and his statement that the petitioner had moved applications to the department and that the respondents had not issued muster roll in the name of the petitioner after his termination, has not been shattered on record. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the aforesaid applications to the department; rather he feigned ignorance about the same and therefore the evidence of the petitioner that he had moved applications Ext. PW1/F and Ext. PW1/G to the department duly corroborated by the evidence of Khyali Singh PW2, has to be accepted to be correct.

21. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, he would not have moved applications one after the another to re-engage him. Therefore the evidence of the petitioner Vipin Kumar PW1 that the respondents have terminated his services in August, 1999 duly corroborated by Khyali Singh PW2 and applications Ext. PW1/F and Ext. PW1/G, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in August, 1999 and he had not left the job as alleged by the respondents.

22. The petitioner has alleged that the respondents have terminated his services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

23. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

24. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

25. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

26. In the case in hand, the petitioner as per mandays chart Ext. PW1/K and Ext. R-1, had worked for 94 days only with the respondents which in turn proves that he had not worked for 240 days during the period of 12 calendar months preceding the date of his termination and therefore he was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating his services. Hence violation of Section 25-F of the I. D. Act is not proved.

27. The petitioner has further alleged that the respondents have retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last comer first go'.

28. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-3 wherein Roshani

Devi shown at serial No. 652 was engaged on 4-7-1999, Mamta Devi shown at serial No. 648 was engaged on 6-4-2000 and Inder Singh shown at serial No. 647 was engaged on 1-1-2000 and thus Roshani Devi was engaged after engagement of the petitioner in May, 1999 and before termination of his services in August, 1999 and she was junior to the petitioner and she was not engaged on compassionate ground, therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner. Hence it is established on record that the respondents have retained junior to the petitioner in service while terminating his services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

29. The petitioner has also alleged that the respondents have engaged fresh hands after terminating his services. The petitioner in para No.4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on November, 2004 and Satya Devi on 27-1-2011 after terminating his services but he was not given opportunity of re-employment. The respondents in reply to para No.4, have averred that para No. 4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Furthermore, the petitioner has placed seniority list Ext. PW1/L of 834 workers *w.e.f.* 01.01.2000 to 31-12-2000 on record. The respondents have not disputed that the seniority list Ext. PW1/L. It would be evident from the perusal of the seniority list that the respondents have engaged all the 834 workmen of different categories including "beldars" from 1-1-2000 onward. Thus, in view of aforesaid admission of respondents and the seniority list Ext. PW1/L, it is also established on record that the respondents have engaged numerous beldars after termination of the services of the petitioner in August, 1999, but admittedly, no opportunity of re-employment was given to him. Hence violation of Section 25-H of the I. D. Act is also proved.

30. The petitioner thus has proved on record that the respondents have terminated his services in violation of the principle of 'last comer first go' and engaged fresh hand without giving opportunity of re-employment to him.

31. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 5.6.2015 after lapse of more than 15 years of termination of his services in the month of August, 1999 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

32. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record *vis-vis* reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31-8-2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 12 1/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held

before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.

- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, *viz.*; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13-3-2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3.4.2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibusjurasubveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.
- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December,

1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 12 1/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.

[10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in *Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017* and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.

[11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in *Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd.*, 2016 9 SCC 431 and *Rashtriya Colliery MazdoorSangh v. Employers*, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs. 4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

33. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, no period of limitation is prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

34. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of his services, he approached the respondents several time and moved applications to the respondents to re-engage her, but he was not re-engaged and his

evidence to this effect has been corroborated by Khyali Singh PW2 as well as applications Ext. PW1/F moved by him on 22-1-2002 and Ext. PW1/G moved on 6-1-2006 which in turn proves on record that the petitioner after termination of his services kept on making requests to the respondents to re-engage him till 6-1-2006, but he was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of his services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner, taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

35. Hence, taking into consideration the number of working days i.e. 94 for which the petitioner worked with the department from May, 1999 to August, 1999 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs.3,00,000/- is awarded as compensation to the petitioner. Hence issues No.1 and 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

36. In view of my findings returned on issues No.1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

37. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs.3,00,000/- (Rupees three Lakh Only) is awarded as compensation to the petitioner for terminating his services in violation the principle of 'last come first go' and engaging fresh hands after termination of his services without giving an opportunity to him for re-employment. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 44/2017

Date of Institution : 24-1-2017

Date of Decision : 28-5-2024

Shri Anil Kumar s/o Shri Gangu Ram, r/o Village Sanour, P.O. Sari, Sub Tehsil Dharampur,
District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.
. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

“Whether alleged termination of the services of Shri Anil Kumar S/O Shri Gangu Ram, r/o Village Sanour, P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. during January, 2000 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 08-06-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during year 1999 and 2000 for 149 days respectively and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of April, 1999. The respondents verbally terminated his services in the month of January, 2000 without issuance of one month's notice or payment of one month's salary in lieu of notice period to him. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have

retained workmen junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D. Act. After terminating his services, the respondents have also employed fresh workers namely Ajay Kumar on 1.12.2003, Pradeep Kumar on 23-11-2001, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but he was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, he was not re-engaged. Thereafter he approached the respondents in the month of December, 1999 January, 2000, April, 2002, December, 2004, March 2005, October, 2005, January, 2006 and 2-3-2015 to reinstate him but the respondents have shown inability to reinstate him on the ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. He made representations orally as well as in writing continuously to the respondents, but he was not re-engaged. The respondents had also retrenched 1087 workmen on 8-7-2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to him at the time of re-engagement of aforesaid workmen. He raised industrial dispute vide demand notice dated 30-12-2014, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute vide demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No. 8315/2012 and the Hon'ble High Court vide judgment dated 20-12-2012 decided the same along-with 46 connected matters with CWP No. 5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and choose has taken plea of delay in his case. The industrial dispute raised by him does not suffers from delay and laches. The act of the respondents terminating his services in January, 2000 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. He is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections qua maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar during the month of April, 1999. It has been averred that the petitioner had worked for 149 days in the year 1999 and for 15 days in January, 2000. The services of the petitioner were not terminated; rather he himself had left the job on his own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to him. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8.7.2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed

any case before this court and raised demand notice before Labour Officer, Mandi on 30-12-2014 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 18-9-2018:—

1. Whether termination of the services of petitioner by the respondents during January, 2000 is/was legal and justified as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.
4. Whether the claim petition suffers from delay and laches as alleged? *OPR*

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides himself, has examined Khyali Singh, PW1 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1 : No

Issue No.2 : Compensation

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1,2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wager in April, 1999 and he worked as such till January, 2000. The respondents have averred that the petitioner worked for 149 days in the year 1999 and for 15 days only in the year 2000.

13. The petitioner has alleged that the respondents had terminated his services without issuing one month's notice to him or payment of one month's wages in lieu of notice period and that the respondents has retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services and also engaged fresh hands after termination of his services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on his own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. PW1/B produced by the petitioner and Ext. R-1 produced on record by the respondents, the petitioner had worked for total 149 days in the year 1999 and 15 days in January, 2000 and thus he had worked for 164 days in all from April, 1999 to January, 2000.

16. The petitioner Anil Kumar, in substantiation of his claim, appeared as PW2 and has filed affidavit Ext. PW2/A in his examination-in-chief wherein he has affirmed the averments made in the petition on oath. He has also tendered applications Ext. PW2/C and Ext. PW2/D, demand notice Ext. PW2/E, copy of seniority list received under RTI Ext. PW2/F and copies of muster Rolls Ext. PW2/G-1 to Ext. PW2/G-8 in evidence. He has been cross-examined at length, but despite lengthy cross-examination, he has denied that he himself had left the job. He has admitted that he had not completed 240 days service in any calendar year. He has admitted that letters Ext. PW2/C and Ext. PW2/D are not diarized. He has admitted that he never made written request as stated by him. He has denied that the respondents had not retained workmen junior to him in service. He has also denied that he was not re-engaged as he himself had left the job.

17. The petitioner has also examined one Khyali Singh as PW1, who has filed affidavit Ext. PW1/A in his examination-in-chief. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1-4-1994 and retired on 30.6.2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in April, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the department terminated his services without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after his termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in his name. The petitioner had also requested him many times to re-engage him and issue muster roll to him, but he had shown inability to re-engage him. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner had also visited the office of Executive Engineer PWD, Dharampur Division in his presence with written applications to re-engage him, but he was not re-engaged. In his cross-examination, he admitted that the mandays are prepared as per muster rolls. He has admitted that the petitioner had worked *w.e.f.* April, 1999 to January, 2000. He has also admitted that as per record the petitioner had worked for 149 days in 1999 and 15 days in January, 2000. He denied that that the petitioner had not made any request to him to re-engage him. He has admitted that had the petitioner moved applications, diary number should have been written thereon.

18. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1 and seniority

list Ext. R-2 in evidence. In his cross-examination, he has admitted that there was no remarks in the muster rolls Ext. PW2/G-1 to G-8 that the petitioner has left the job himself. No notice was issued to the petitioner after his leaving the job. He did not know that the petitioner had made representations Ext. PW2/C and Ext. PW2/D to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW2/F were engaged after January, 2000. He has admitted that no muster roll was issued to the petitioner after January, 2000 and added that he himself had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

19. This is entire evidence led by both the parties.

20. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that his services were terminated by the respondents. The petitioner Anil Kumar PW2 categorically has stated that his service were terminated by the respondents in January, 2000 and despite his lengthy cross-examination, he has maintained his stand. The petitioner has produced copies of applications dated 2.4.2002 and 6.1.2006 Ext. PW2/C and Ext. PW2/D moved to the respondent No. 2 on record, however, he, in his cross-examination has admitted that he had not made written request to re-engage him. But his evidence that he had made oral request to re-engage him has not been challenged by the respondents and his evidence to this effect has been corroborated by Khyali Singh PW1, who was posted as supervisor in the respondents department. He (PW1) categorically has stated that the petitioner requested JE to issue muster rolls in his name, but the department had not issued muster rolls and the petitioner also requested him to re-engage him and that the petitioner visited office of Executive Engineer many time in his presence with written applications to re-engage him but he was not re-engaged. His evidence qua visiting office of the respondent No.2 and making requests to re-engage him has not been shattered on record therefore it can safely be accepted. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the applications to the department; rather he feigned ignorance about the same and therefore the evidence of the petitioner that he had made request to the respondents to re-engage him duly corroborated by the evidence of Khyali Singh PW1, has to be accepted to be correct.

21. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, he would not have made requests to the respondents several times to re-engage him. Therefore the evidence of the petitioner Anil Kumar PW2 that the respondents have terminated his services in January, 2000 duly corroborated by Khyali Singh PW1, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in January, 2000 and he had not left the job as alleged by the respondents.

22. The petitioner has alleged that the respondents have terminated his services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

23. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

24. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

25. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

26. In the case in hand, the petitioner as per mandays chart Ext. PW1/B and Ext. R-1, had worked for 149 days from April, 1999 to December, 1999 and 15 days in January, 2000 with the respondents which in turn proves that he had not worked for 240 days during the period of 12 calendar months preceding the date of his termination and therefore he was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating his services. Hence violation of Section 25-F of the I. D. Act is not proved.

27. The petitioner has further alleged that the respondents have retained junior to him namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating his services in violation of the principle of 'last comer first go'.

28. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-2 wherein Roshani Devi shown at serial No. 652 was engaged on 4-7-1999, Mamta Devi shown at serial No. 648 was engaged on 6.4.2000 and Inder Singh shown at serial No. 647 was engaged on 1-1-2000 and thus Roshani Devi and Inder Singh were engaged after engagement of the

petitioner in April, 1999 and before termination of his services in January, 2000 and they were junior to the petitioner. Inder Singh as per remarks in remarks column was re-engaged on compassionate ground, but no document has been produced on record by the respondents to prove that his mother or father was working under the respondents and they died on duty. But even if Inder Singh is accepted to have been appointed on compassionate ground, even then Roshani Devi was not engaged on compassionate ground, therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner in January, 2000. Hence, it is established on record that the respondents have retained junior to the petitioner in service while terminating his services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

29. The petitioner has also alleged that the respondents have engaged fresh hands after terminating his services in January, 2000. The petitioner in para No. 4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj in November, 2004 and Satya Devi on 27-1-2011 after terminating his services in January, 2000 but he was not given opportunity of re-engagement. The respondents in reply to para No. 4, have averred that para No. 4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Hence in view of the admission of the respondents, it is also established on record that the respondents have engaged numerous workmen after termination of the services of the petitioner in January, 2000, and no opportunity of re-employment was given to him. Hence violation of Section 25-H of the I. D. Act is also proved.

30. The petitioner thus has proved on record that the respondents have terminated his services in violation of the principle of 'last come first go' and engaged fresh hand without giving opportunity of re-employment to him.

31. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 8.6.2015 after lapse of more than 15 years of termination of his services in the month of January, 2000 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

32. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record *vis- -vis* reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31-8-2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 12 1/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference

and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.

- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, *viz.*; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13-3-2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3-4-2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.
- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually

worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 121/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.

[10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in *Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017* and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.

[11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in *Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd.*, 2016 9 SCC 431 and *Rashtriya Colliery MazdoorSangh v. Employers*, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs.4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

33. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

34. In the case in hand, as has been observed above, the petitioner while appearing as PW2 has stated that after termination of his services, he approached the respondents several time to re-engage him, but he was not re-engaged and his evidence to this effect has been corroborated by Khyali Singh PW1 which in turn proves on record that the petitioner after termination of his services kept on making requests to the respondents to re-engage him, but he was not re-engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising

dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of his services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner, taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

35. Hence, taking into consideration the number of working days i.e. 164 days for which the petitioner worked with the department from April, 1999 to January, 2000 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs. 4,00,000/- is awarded as compensation to the petitioner. Hence issue No.1 and issue No. 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No. 3

36. In view of my findings returned on issues No. 1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

37. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs.4,00,000/- (Rupees Four Lakh Only) is awarded as compensation to the petitioner for terminating his services in violation the principle of 'last come first go' and engaging fresh hands after termination of his services without giving an opportunity to him for re-employment. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 905/2016

Date of Institution : 24-12-2016

Date of Decision : 28-5-2024

Smt. Promila Devi w/o Shri Prem Singh, r/o Village Sanour, P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D. Act') to this court for adjudication:—

“Whether alleged termination of the services of Smt. Promila Devi w/o Shri Prem Singh, r/o Village Sanour, P.O. Sari, Sub-Tehsil Dharampur, District Mandi, H.P. during July, 1999 by (i) the Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute vide demand notice dated 08-06-2015 after delay of more 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/ management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that she was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of April, 1999. The respondents verbally terminated her services in the month of July, 1999 without issuance of one month's notice or payment of one month's salary in lieu of notice period to her. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D. Act. After terminating her services, the respondents have also employed fresh workers namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2001, Lekh Raj on 11/2004 and Satya Devi on 27-1-2011 but she was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, she was not re-engaged. Thereafter she approached the respondents in the month of December, 1999, January, 2000, October, 2004, March 2005, September, 2005 and January, 2006 to reinstate her but the respondents have shown inability to reinstate her on the

ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. She made representations orally as well as in writing continuously to the respondents, but she was not re-engaged. The respondents had also retrenched 1087 workmen on 8-7-2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to her at the time of re-engagement of aforesaid workmen. She raised industrial dispute *vide* demand notice dated 8-6-2015, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents w.e.f. 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute *vide* demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No. 8315/2012 and the Hon'ble High Court *vide* judgment dated 20-12-2012 decided the same along-with 46 connected matters with CWP No. 5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and choose has taken plea of delay in her case. The industrial dispute raised by her does not suffers from delay and laches. The act of the respondents terminating her services in July, 1999 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. She is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections qua maintainability and delay and laches. On merits, it has been averred that the petitioner was engaged as daily wage beldar during month of May, 1999 and she worked upto August, 1999, but for 101 days only. It has further been averred that the services of the petitioner were not terminated; rather she herself had left the job on her own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to her. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi on 8-6-2015 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 18-9-2018:—

1. Whether termination of the services of petitioner by the respondents during July, 1999 is/was legal and justified as alleged? . . . *OPP*.
2. If issue No.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? OPR 1&2
4. Whether the claim petition suffers from delay and laches as alleged? . . . *OPR*.

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides herself, has examined Khyali Singh, PW 2 and Yogesh Chander, PW3 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:-

Issue No.1 : No

Issue No.2 : Compensation

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1,2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wager, however, the plea of the respondents that she was engaged in May, 1999 and she worked as such till August 1999, but for 101 days only.

13. The petitioner has alleged that the respondents had terminated her services without issuing one month's notice to her or payment of one month's wages in lieu of notice period and that the respondents has retained junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services and also engaged fresh hands after termination of her services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on her own sweet will and therefore

there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. R-1 placed on record by the respondent, the petitioner had worked for total 101 days from May, 1999 to August, 1999, which fact has been admitted by the petitioner (PW1).

16. The petitioner Promila Devi, in substantiation of her claim, appeared as PW1 and has filed affidavit Ext. PW1/A in her examination-in-chief wherein she has affirmed the averments made in the petition on oath. She has also tendered seniority list Ext. PW1/B, copy of reply to the demand notice Ext. PW1/C, copy of application dated 8-10-2004 Mark-A, copy of application dated 6-1-2006 Mark-B and copy of demand notice Mark-C in evidence. She has been cross-examined at length, but despite lengthy cross-examination, she has denied that she herself had left the job. She has also denied that the department had not retained workmen junior to her in service nor the fresh hands were engaged by the respondents. She has feigned ignorance that the respondents have engaged the workmen on compassionate ground or as per the orders of the court. She has also denied that she was not re-engaged as she herself had left the job.

17. The petitioner has also examined one Khyali Singh as PW2, who has filed affidavit Ext. PW2/A in his examination-in-chief. He has also proved copy of application dated 8-10-2004 Ext. PW2/B and copy of application dated 6-1-2006 Ext. PW2/C. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1-4-1994 and retired on 30-6-2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in April, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the department had terminated her services without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after her termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in her name. The petitioner had also requested him many times to re-engage her and issue muster roll to her, but he had shown inability to re-engage her. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner visited the office of the respondents 7-8 years in his presence with written applications but the department did not re-engage her. In his cross-examination, he has stated that he retired as supervisor in the year 2010. He has denied that the petitioner had not made any correspondence with the department to re-engage her.

18. Yogesh Chander PW3 posted as SDO HPPWD Dharampur, District Mandi, H.P. has stated that he has brought the record *i.e.* muster rolls pertaining to the petitioner. He has examined the original muster rolls and there is no entry in the same that the petitioner had left the job at her own.

19. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1 and seniority list Ext. R-2 in evidence. In his cross-examination, he has admitted that there was no remarks in the mandays chart Ext. R-1 that the petitioner has left the job herself. No notice was issued to the petitioner after her leaving the job. He did not know that the petitioner had made representations Ext. PW2/B to Ext. PW2/C to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/B were engaged after August, 1999. He has admitted that no muster roll was issued to the petitioner and added that she herself

had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

20. This is entire evidence led by both the parties.

21. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that her services were terminated by the respondents. The petitioner Promila Devi PW1 categorically has stated that her service were terminated by the respondents and despite her lengthy cross-examination, she has maintained her stand. The petitioner has filed application dated 8-10-2004 Ext. PW2/B and copy of application dated 6-1-2006 Ext. PW2/C moved to the respondent No. 2 on record. In these applications, the petitioner had claimed that her services were terminated and she had requested the respondents till 6-1-2006 to re-engage her. All these applications have been proved by Khyali Singh PW 2 on record. The exhibition of all these applications was objected to on behalf of the respondents, however, the respondents have not disputed the fact that Khyali Singh PW2 was posted as supervisor in the respondents department and his statement that the petitioner had moved applications to the department and that the respondents had not issued muster roll in the name of the petitioner after her termination, has not been shattered on record. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the aforesaid applications to the department; rather he feigned ignorance about the same and therefore the evidence of the petitioner that she had moved applications Ext. PW2/B and Ext. PW2/C from the year 2004 to 2006 to the department duly corroborated by the evidence of Khyali Singh PW2, has to be accepted to be correct.

22. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, she would not have moved applications one after the another for about three years to re-engage her. Therefore the evidence of the petitioner Promila Devi PW1 that the respondents have terminated her services duly corroborated by Khyali Singh PW2 and applications Ext. PW2/B and Ext. PW2/C, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in August, 1999 and she had not left the job as alleged by the respondents.

23. The petitioner has alleged that the respondents have terminated her services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

24. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

26. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

27. In the case in hand, the petitioner as per mandays chart Ext. R-1, had worked for 101 days only with the respondents which in turn proves that she had not worked for 240 days during the period of 12 calendar months preceding the date of her termination and therefore she was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating her services. Hence violation of Section 25-F of the I. D. Act is not proved.

28. The petitioner has further alleged that the respondents have retained junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services in violation of the principle of 'last come first go'.

29. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-2 wherein Roshani Devi shown at serial No. 652 was engaged on 4-7-1999, Mamta Devi shown at serial No. 648 was engaged on 6-4-2000 and Inder Singh shown at serial No. 647 was engaged on 1-1-2000. Thus Roshani Devi was engaged after engagement of the petitioner in April, 1999 and before termination of her services in August, 1999 and she was junior to the petitioner and she was not engaged on compassionate ground, therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner in August, 1999. Hence it is established on record that the respondents have retained junior to the petitioner in service while terminating his services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

30. The petitioner has also alleged that the respondents have engaged fresh hands after terminating her services in August, 1999. The petitioner in para No.4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on November, 2004 and Satya Devi on 27-1-2011 after terminating her services but she was not given opportunity of re-engagement. The respondents in reply to para No.4, have averred that para No.4 of the petition need no reply as mentioned in para supra and

therefore, the respondents have admitted the same. Furthermore, the petitioner has placed seniority list Ext. PW1/B of 834 workers *w.e.f.* 01-01-2000 to 31-12-2000 on record. The respondents have not disputed that the seniority list Ext. PW1/B. It would be evident from the perusal of the seniority list that the respondents have engaged all the 834 workmen of different categories including “beldars” from 1-1-2000 onward. Thus, in view of aforesaid admission of respondents and the seniority list Ext. PW1/B, it is also established on record that the respondents have engaged numerous beldars after termination of the services of the petitioner in August, 1999, but admittedly, no opportunity of re-employment was given to her. Hence violation of Section 25-H of the I. D. Act is also proved.

31. The petitioner thus has proved on record that the respondents have terminated her services in violation of the principle of ‘last comer first go’ and engaged fresh hand without giving opportunity of re-employment to her.

32. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 8-6-2015 after lapse of more than 16 years of termination of her services in the month of August, 1999 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

33. Hon’ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

[7] After a close scrutiny of the material available on record vis- -vis reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31-8-2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 12 1/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.

[8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while

ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.: Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13.3.2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3-4-2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 12 1/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.

[10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in *Sh. Daulat Ram v. The Executive Engineer, HPPWD*, CWP No. 1887 of 2017 and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.

[11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in *Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd.*, 2016 9 SCC 431 and *Rashtriya Colliery MazdoorSangh v. Employers*, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs. 4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

34. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

35. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of her services, she approached the respondents several time and moved applications to the respondents to re-engage her, but she was not re-engaged and her evidence to this effect has been corroborated by Khyali Singh PW2 as well as applications. Application Ext. PW2/B moved by her on 8-10-2004 and Ext. PW2/C moved on 6.1.2006, which in turn proves on record that the petitioner after termination of her services kept on making requests to the respondents to re-engage her till 6-1-2006, but she was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of her services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner, taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

36. Hence, taking into consideration the number of working days i.e. 101 days for which the petitioner worked with the department from May, 1999 to August, 1999 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs. 4,00,000/- is awarded as compensation to the petitioner. Hence issues No.1 and 2 are

decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

37. In view of my findings returned on issues No.1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

38. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs.4,00,000/- (Rupees Four Lakh Only) is awarded as compensation to the petitioner for terminating her services in violation the principle of 'last come first go' and engaging fresh hands after termination of her services without giving an opportunity to her for re-employment. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 903/2016
Date of Institution : 24-12-2016
Date of Decision : 28-5-2024

Smt. Jai Devi w/o Shri Gurdas, r/o VPO Sari, Sub Tehsil Dharampur, District Mandi, H.P.
.. *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.
.. *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.

For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

“Whether alleged termination of the services of Smt. Jai Devi w/o Shri Gurdas, r/o V.P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. *w.e.f.* August, 1999 by (i) the Engineer-in-Chief, H.P.P.W.D., NirmanBhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute vide demand notice dated 07-06-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that she was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of January, 1999. The respondents verbally terminated her services in the month of August, 1999 without issuance of one month's notice or payment of one month's salary in lieu of notice period to her. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D.Act. After terminating her services, the respondents have also employed fresh workers namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23.11.2001, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but she was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, she was not re-engaged. Thereafter she approached the respondents in the month of December, January, 2000 and 2004, March 2005, September, 2005 and January, 2006 to reinstate her but the respondents have shown inability to reinstate her on the ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. She made representations orally as well as in writing continuously to the respondents, but she was not re-engaged. The respondents had also retrenched 1087 workmen on 8.7.2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8-7-2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to her at the time of re-engagement of aforesaid workmen. She raised industrial dispute *vide* demand notice dated 7-6-2015, however,

the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute vide demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No. 8315/2012 and the Hon'ble High Court vide judgment dated 20-12-2012 decided the same along-with 46 connected matters with CWP No. 5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and choose has taken plea of delay in her case. The industrial dispute raised by her does not suffer from delay and laches. The act of the respondents terminating her services in August, 1999 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. She is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections *qua* maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar during month of January, 1999 and she worked upto August, 1999, but for 203 days only. It has been averred that the services of the petitioner were not terminated; rather she herself had left the job on her own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to her. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi on 7-6-2015 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 18-9-2018:—

1. Whether termination of the services of petitioner by the respondents *w.e.f.* August, 1999 is/was legal and justified as alleged? . . . OPP.
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . . OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? OPR 1&2.
4. Whether the claim petition suffers from delay and laches as alleged? . . . OPR.

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides herself, has examined Khyali Singh, PW2 and Yogesh Chander, PW3 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1 : No

Issue No.2 : Compensation

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1,2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wager in January, 1999 and she worked as such till August 1999, but for 203 days only.

13. The petitioner has alleged that the respondents had terminated her services without issuing one month's notice to her or payment of one month's wages in lieu of notice period and that the respondents has retained junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services and also engaged fresh hands after termination of her services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on her own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. R-1 placed on record by the respondent, the petitioner had worked for total 203 days from January, 1999 to August, 1999.

16. The petitioner Jai Devi, in substantiation of her claim, appeared as PW1 and has filed affidavit Ext. PW1/A in her examination-in-chief wherein she has affirmed the averments made in the petition on oath. She has also tendered seniority list Ext. PW1/B, copy of mandays chart Ext. PW1/C, copies of applications Mark-A to Mark-D, copy of demand notice Mark-E and copy of reply Ext. PW1/D in evidence. She has been cross-examined at length, but despite lengthy cross-examination, she has denied that she herself had left the job. She has also denied that the

department had not retained workmen junior to her in service nor the fresh hands were engaged by the respondents. She has feigned ignorance that the respondents have engaged the workmen on compassionate ground or as per the orders of the court. She has also denied that she was not re-engaged as she herself had left the job.

17. The petitioner has also examined one Khyali Singh as PW2, who has filed affidavit Ext. PW2/A in his examination-in-chief. He has also proved copy of application dated 20-8-2002 Ext. PW2/B, copy of letter dated 6-1-2006 Ext. PW2/C, copy of application dated 25-5-2007 Ext. PW2/D and copy of application dated 5-1-2004 Ext. PW2/E. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1.4.1994 and retired on 30.6.2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in January, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the department had terminated her services in August, 1999 without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after her termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in her name. The petitioner had also requested him many times to re-engage her and issue muster roll to her, but he had shown inability to re-engage her. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner visited the office of the respondents 7-8 years in his presence with written applications but the department did not re-engage her. In his cross-examination, he has stated that he retired as supervisor in the year 2010. He has denied that the petitioner had not made any correspondence with the department to re-engage her. The respondents had engaged about 70 beldars in the year 1999 on daily wages and their attendance on marked in muster roll. He has denied that some of them had left the job on their own and added that the Executive Engineer had not issued muster rolls in their names.

18. Yogesh Chander PW3 posted as SDO HPPWD Dharampur, District Mandi, H.P. has stated that he has brought the record i.e. muster rolls pertaining to the petitioner. He has examined the original muster rolls and there is no entry in the same that the petitioner had left the job at her own.

19. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1 and seniority list Ext. R-2 in evidence. In his cross-examination, he has denied that there was no remarks in the mandays chart Ext. R-1 that the petitioner has left the job herself. No notice was issued to the petitioner after her leaving the job. He did not know that the petitioner had made representations Ext. PW2/B to Ext. PW2/E to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/B were engaged after August, 1999. He has admitted that no muster roll was issued to the petitioner and added that she herself had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

20. This is entire evidence led by both the parties.

21. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that her services were terminated by the respondents. The petitioner Jai Devi PW1 categorically has stated

that her service were terminated by the respondents in August, 1999 and despite her lengthy cross-examination, she has maintained her stand. The petitioner has filed copy of application dated 20-8-2002 Ext. PW2/B, copy of application dated 6.1.2006 Ext. PW2/C, copy application dated 25-5-2007 Ext. PW2/D and copy of application dated 5-1-2004 Ext. PW2/E moved to the respondent No.2 on record. In these applications, the petitioner had claimed that her services were terminated and she had repeatedly requested the respondents till 25-5-2007 to re-engage her. All these applications have been proved by Khyali Singh PW2 on record. The exhibition of all these applications was objected to on behalf of the respondents, however, the respondents have not disputed the fact that Khyali Singh PW2 was posted as supervisor in the respondents department and his statement that the petitioner had moved applications to the department and that the respondents had not issued muster roll in the name of the petitioner after her termination, has not been shattered on record. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the aforesaid applications to the department; rather he has feigned ignorance about the same and therefore the evidence of the petitioner that she had moved applications Ext. PW2/B to Ext. PW2/E to the respondents duly corroborated by the evidence of Khyali Singh PW2, has to be accepted to be correct.

22. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, she would not have moved applications one after the another for about five years to re-engage her. Therefore the evidence of the petitioner Jai DeviPW1 that the respondents have terminated her services in August, 1999 duly corroborated by Khyali Singh PW2 and applications Ext. PW2/B to Ext. PW2/E, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in August, 1999 and she had not left the job as alleged by the respondents.

23. The petitioner has alleged that the respondents have terminated her services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

24. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has

actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

26. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

27. In the case in hand, the petitioner as per mandays chart Ext. PW1/C and Ext. R-1, had worked for 203 days only with the respondents which in turn proves that she had not worked for 240 days during the period of 12 calendar months preceding the date of her termination and therefore she was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating her services. Hence violation of Section 25-F of the I. D. Act is not proved.

28. The petitioner has further alleged that the respondents have retained junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services in violation of the principle of 'last come first go'.

29. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-2 wherein Roshani Devi shown at serial No. 652 was engaged on 4.7.1999, Mamta Devi shown at serial No.648 was engaged on 6.4.2000 and Inder Singh shown at serial No.647 was engaged on 1.1.2000 and thus Roshani Devi was engaged after engagement of the petitioner in January, 1999 and before termination of her services in August, 1999 and she was junior to the petitioner and she was not engaged on compassionate ground therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner in August, 1999. Hence it is established on record that the respondents have retained junior to the petitioner in service while terminating her services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

30. The petitioner has also alleged that the respondents have engaged fresh hands after terminating her services in the year 1999. The petitioner in para No. 4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on November, 2004 and Satya Devi on 27-1-2011 after terminating her services in August, 1999 but she was not given opportunity of re-engagement. The respondents in reply to para No.4, have averred that para No. 4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Furthermore, the petitioner has placed seniority list Ext. PW1/B of 834 workers *w.e.f.* 01-01-2000 to 31-12-2000 on record. The respondents have not disputed that the seniority list Ext. PW1/B. It would be evident from the perusal of the seniority list that the respondents have engaged all the 834 workmen of different categories including "beldars" from 1.1.2000 onwards. Thus in view of aforesaid admission of respondents and the seniority list Ext. PW1/B, it is also established on record that the respondents have engaged numerous beldars after termination of the services of the petitioner in

August, 1999, but admittedly, no opportunity of re-employment was given to her. Hence violation of Section 25-H of the I. D. Act is also proved.

31. The petitioner thus has proved on record that the respondents have terminated her services in violation of the principle of 'last comer first go' and engaged fresh hands without giving opportunity of re-employment to her.

32. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 7.6.2015 after lapse of more than 15 years of termination of her services in the month of August, 1999 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

33. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record vis- -vis reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31-8-2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 12 1/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.
- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no sforce in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act ibid, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a

dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, *viz.*; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13-3-2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3-4-2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 12 1/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.
- [10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017 and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding

judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.

- [11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd., 2016 9 SCC 431 and Rashtriya Colliery MazdoorSangh v. Employers, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs.4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

34. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

35. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of her services, she approached the respondents several time and moved applications to the respondents to re-engage her, but she was not re-engaged and her evidence to this effect has been corroborated by Khyali Singh PW2 as well as applications Ext. PW2/B moved by her on 20.8.2002, Ext. PW2/E moved on 5.1.2004, Ext. PW2/C moved on 6-1-2006 and Ext. PW2/D moved on 25-5-2007, which in turn proves on record that the petitioner after termination of her services, kept on making requests to the respondents to re-engage her till 25-5-2007, but she was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of her services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

36. Hence, taking into consideration the number of working days i.e. 203 for which the petitioner worked with the department from January, 1999 to August, 1999 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs.4,00,000/- is awarded as compensation to the petitioner. Hence issues No.1 and 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

37. In view of my findings returned on issues No.1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

38. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs.4,00,000/- (Rupees Four Lakh Only) is awarded as compensation to the petitioner for terminating her services in violation the principle of 'last come first go' and engaging fresh hands after termination of her services without giving an opportunity to her for re-employment. The respondents shall pay the said compensation within period of three months, failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 903/2016
Date of Institution : 24-12-2016
Date of Decision : 28-5-2024

Smt. Jai Devi w/o Shri Gurdas, r/o VPO Sari, Sub Tehsil Dharampur, District Mandi, H.P.
... *Petitioner.*

Versus

1. The Engineer-in-Chief, H.P.P.W.D. Nirman Bhawan, Shimla, District Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.
... *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.V. Bhardwaj, Ld. Adv.
For the respondent(s) : Sh. Ravi Kumar, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D. Act') to this court for adjudication:—

“Whether alleged termination of the services of Smt. Jai Devi W/O Shri Gurdas, r/o V.P.O. Sari, Sub Tehsil Dharampur, District Mandi, H.P. *w.e.f.* August, 1999 by (i) the Engineer-in-Chief, H.P.P.W.D., NirmanBhawan, Shimla, District Shimla, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute vide demand notice dated 07-06-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that she was engaged by the respondents in HPPWD Division (B&R) Dharampur as daily wage worker in the month of January, 1999. The respondents verbally terminated her services in the month of August, 1999 without issuance of one month's notice or payment of one month's salary in lieu of notice period to her. The respondents department had terminated more than 2000 daily wage workmen in HPPWD Division Dharampur without following the procedure as provided under the I.D. Act. The respondents have retained workmen junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services in violation of the principle of 'last come first go' and the provisions of Section 25-G of the I.D. Act. After terminating her services, the respondents have also employed fresh workers namely Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2001, Lekh Raj on 11/2004 and Satya Devi on 27.1.2011 but she was not given an opportunity of re-employment and thereby violated the provisions of Section 25-H of the I.D. Act. After termination of the services of 1697 workmen in the month of June/July, 2004, some of them were re-engaged by the respondents, however, she was not re-engaged. Thereafter she approached the respondents in the month of December, January, 2000 and 2004, March 2005, September, 2005 and January, 2006 to reinstate her but the respondents have shown inability to reinstate her on the ground that the surplus workmen of Dharampur Division were be retrenched and process for retrenchment was continuing. She made representations orally as well as in writing continuously to the respondents, but she was not re-engaged. The respondents had also retrenched 1087 workmen on 8.7.2005 and most of them raised industrial disputes in the year 2007 and 2008 and about 500 workmen were ordered to be reinstated by this court after quashing the retrenchment order dated 8.7.2005. Vijay Kumar, Megh Singh, Sanjay Kumar, Raj Kumar, Roop Lal, Saroj Kumar and Malkeet Khan, who were junior to her, were reinstated on the basis of the award passed by this court and they all are presently working under the respondents in different Sub Divisions on regular basis. The respondents have not given an opportunity of re-employment to her at the time of re-engagement of aforesaid workmen. She raised industrial dispute vide demand notice dated 7-6-2015, however, the matter was not amicably settled and appropriate Government made reference to this court. It has also been averred that services of one Sanjay Kumar, who had also worked under the respondents *w.e.f.* 21-6-1999 to 31-12-1999, were terminated and he had raised the industrial dispute vide demand notice dated 12-5-2009 after 10 years and the Labour Commissioner had declined to refer the matter to the court on 16-3-2012. The said workman had challenged the order of the Labour Commissioner before Hon'ble High Court in CWP No.8315/2012 and the Hon'ble High Court vide judgment dated 20-12-2012 decided the same along-with 46 connected

matters with CWP No.5189/2012 and said Sanjay Kumar was reinstated in August, 2013 and now his services have been regularized by the department whereas the appropriate Government by adopting the policy of pick and choose has taken plea of delay in her case. The industrial dispute raised by her does not suffers from delay and laches. The act of the respondents terminating her services in August, 1999 in contravention of the provisions of the I.D. Act is highly unjustified, arbitrary and unconstitutional and the same is liable to be set aside. She is still unemployed. Hence this petition.

4. The petition has been resisted by the respondents by filing reply taking preliminary objections qua maintainability and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage beldar during month of January, 1999 and she worked upto August, 1999, but for 203 days only. It has been averred that the services of the petitioner were not terminated; rather she herself had left the job on her own sweet will and therefore, there was no question of issuance of notice or to pay wages in lieu of notice period to her. The services of workmen were not terminated in the year 1999 and 2000 as alleged. The workmen named by the petitioner were engaged on muster roll basis on compassionate ground after seeking approval from the Government as their parents had died on duty. It has been averred that some workmen were retrenched during February, 2004, however, the petitioner had already left the job. It has been denied that the services of 1697 workmen were terminated in the month of June/July 2004. The workmen, who were terminated in February 2004, had assailed their termination before the Administrative offices and after that they were re-engaged in phased manner, however, the petitioner had already left the job prior to their termination in the month of February, 2004. 1087 workmen were retrenched on 8-7-2005 after completing codal formalities. The retrenched workmen had raised industrial dispute and the references were made to this court and they were re-engaged and regularized as per orders of this court. The petitioner had not filed any case before this court and raised demand notice before Labour Officer, Mandi on 7-6-2015 after lapse of more than 16 years, therefore, question of violation of Section 25-H of the I. D. Act does not arise. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reasserted after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 18-9-2018:—

1. Whether termination of the services of petitioner by the respondents *w.e.f.* August, 1999 is/was legal and justified as alleged? ... *OPP.*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? ... *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? OPR 1&2.
4. Whether the claim petition suffers from delay and laches as alleged? ... *OPR.*

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides herself, has examined Khyali Singh, PW2 and Yogesh Chander, PW3 and closed the evidence.

8. On the other hand, the respondents have examined Er. Vivek Sharma as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1 : No

Issue No.2 : Compensation

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1,2 and 4

11. All the issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondents that the petitioner was engaged as daily wagger in January, 1999 and she worked as such till August 1999, but for 203 days only.

13. The petitioner has alleged that the respondents had terminated her services without issuing one month's notice to her or payment of one month's wages in lieu of notice period and that the respondents have retained junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services and also engaged fresh hands after termination of her services.

14. On the other hand, the respondents have denied all the allegations of the petitioner. The respondents have claimed that the petitioner had left the job on her own sweet will and therefore there was no necessity to serve notice upon the petitioner and that the workmen named by the petitioner were engaged on compassionate ground after seeking approval from the Higher Authorities and no fresh hands were engaged as alleged by the petitioner.

15. As per mandays chart Ext. R-1 placed on record by the respondent, the petitioner had worked for total 203 days from January, 1999 to August, 1999.

16. The petitioner Jai Devi, in substantiation of her claim, appeared as PW1 and has filed affidavit Ext. PW1/A in her examination-in-chief wherein she has affirmed the averments made in the petition on oath. She has also tendered seniority list Ext. PW1/B, copy of mandays chart Ext. PW1/C, copies of applications Mark-A to Mark-D, copy of demand notice Mark-E and copy of reply Ext. PW1/D in evidence. She has been cross-examined at length, but despite lengthy cross-examination, she has denied that she herself had left the job. She has also denied that the department had not retained workmen junior to her in service nor the fresh hands were engaged by the respondents. She has feigned ignorance that the respondents have engaged the workmen on compassionate ground or as per the orders of the court. She has also denied that she was not re-engaged as she herself had left the job.

17. The petitioner has also examined one Khyali Singh as PW2, who has filed affidavit Ext. PW2/A in his examination-in-chief. He has also proved copy of application dated 20-8-2002 Ext. PW2/B, copy of letter dated 6-1-2006 Ext. PW2/C, copy of application dated 25-5-2007 Ext. PW2/D and copy of application dated 5-1-2004 Ext. PW2/E. He has stated that he was engaged as supervisor by the respondents in the year 1983 on daily wages and he was regularized on 1-4-1994 and retired on 30-6-2010 as supervisor from Dharampur Division HPPWD District Mandi, H.P. The petitioner was engaged in January, 1999 when he was posted as supervisor in HPPWD Division Dharampur. The respondents allowed the petitioner to work for few months and thereafter the department had terminated her services in August, 1999 without issuing any notice. The petitioner had worked under his control and supervision. The respondents had not issued muster rolls to the petitioner for the next month after her termination. The petitioner had visited the concerned JE of the department several times to issue muster roll, but the department did not issue the muster roll in her name. The petitioner had also requested him many times to re-engage her and issue muster roll to her, but he had shown inability to re-engage her. The respondents have also engaged fresh hands after termination of the services of the petitioner. The petitioner visited the office of the respondents 7-8 years in his presence with written applications but the department did not re-engage her. In his cross-examination, he has stated that he retired as supervisor in the year 2010. He has denied that the petitioner had not made any correspondence with the department to re-engage her. The respondents had engaged about 70 beldars in the year 1999 on daily wages and their attendance on marked in muster roll. He has denied that some of them had left the job on their own and added that the Executive Engineer had not issued muster rolls in their names.

18. YogeshChander PW3 posted as SDO HPPWD Dharampur, District Mandi, H.P. has stated that he has brought the record *i.e.* muster rolls pertaining to the petitioner. He has examined the original muster rolls and there is no entry in the same that the petitioner had left the job at her own.

19. On the other hand, the respondents have examined Executive Engineer Vivek Sharma as RW1, who has filed affidavit in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered mandays chart Ext. R-1 and seniority list Ext. R-2 in evidence. In his cross-examination, he has denied that there was no remarks in the mandays chart Ext. R-1 that the petitioner has left the job herself. No notice was issued to the petitioner after her leaving the job. He did not know that the petitioner had made representations Ext. PW2/B to Ext. PW2/E to the department but the department did not consider the same. He could not say that the workmen mentioned in seniority list Ext. PW1/B were engaged after August, 1999. He has admitted that no muster roll was issued to the petitioner and added that she herself had left the job. He has denied that the respondents intentionally did not allow the petitioner to work for 240 days in a calendar year. He has denied that the workmen junior to the petitioner were regularized later on. He has admitted that work and finance was available with the department. He has denied that despite work and finance available with the department, the services of the petitioner were illegally terminated.

20. This is entire evidence led by both the parties.

21. It is evident from the resume of the evidence of the witnesses of both the parties discussed supra that the petitioner has led sufficient evidence on record to prove the fact that her services were terminated by the respondents. The petitioner Jai Devi PW1 categorically has stated that her service were terminated by the respondents in August, 1999 and despite her lengthy cross-examination, she has maintained her stand. The petitioner has filed copy of application dated 20.8.2002 Ext. PW2/B, copy of application dated 6-1-2006 Ext. PW2/C, copy application dated 25.5.2007 Ext. PW2/D and copy of application dated 5-1-2004 Ext. PW2/E moved to the respondent No. 2 on record. In these applications, the petitioner had claimed that her services were

terminated and she had repeatedly requested the respondents till 25.5.2007 to re-engage her. All these applications have been proved by Khyali Singh PW2 on record. The exhibition of all these applications was objected to on behalf of the respondents, however, the respondents have not disputed the fact that Khyali Singh PW2 was posted as supervisor in the respondents department and his statement that the petitioner had moved applications to the department and that the respondents had not issued muster roll in the name of the petitioner after her termination, has not been shattered on record. Not only this, Er. Vivek Sharma, RW1, in his cross-examination, has not denied that the fact that the petitioner had not moved the aforesaid applications to the department; rather he has feigned ignorance about the same and therefore the evidence of the petitioner that she had moved applications Ext. PW2/B to Ext. PW2/E to the respondents duly corroborated by the evidence of Khyali Singh PW2, has to be accepted to be correct.

22. So far as the plea of the respondents that the petitioner had left the job is concerned, the same is not tenable. Had the petitioner left the job, she would not have moved applications one after the another for about five years to re-engage her. Therefore the evidence of the petitioner Jai DeviPW1 that the respondents have terminated her services in August, 1999 duly corroborated by Khyali Singh PW2 and applications Ext. PW2/B to Ext. PW2/E, has to be accepted to be correct. Hence, it can safely be concluded that the respondents had terminated the services of the petitioner in August, 1999 and she had not left the job as alleged by the respondents.

23. The petitioner has alleged that the respondents have terminated her services in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act.

24. As per provisions of Section 25-F of the I.D. Act., no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25. As per provisions of Section 25-B (1) of the I. D. Act, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Further as per Sub Section 25-B (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case.

26. Thus, in view of provisions of Sections 25-F and 25-B of the I. D. Act, no workman, who has been in continuous service for 240 days during the period of 12 calendar months preceding

the date of the termination of his services, can be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and retrenchment compensation.

27. In the case in hand, the petitioner as per mandays chart Ext. PW1/C and Ext. R-1, had worked for 203 days only with the respondents which in turn proves that she had not worked for 240 days during the period of 12 calendar months preceding the date of her termination and therefore she was not in continuous service and as such there was no necessity to serve notice under Section 25-F of the I. D. Act upon the petitioner before terminating her services. Hence violation of Section 25-F of the I. D. Act is not proved.

28. The petitioner has further alleged that the respondents have retained junior to her namely Roshani Devi, Mamta Devi and Inder Singh in service while terminating her services in violation of the principle of 'last come first go'.

29. The respondents, on the other hand, have admitted that aforesaid workmen were engaged and the dates of their engagement have also not been disputed, but the plea of the respondents is that all these workmen were engaged on compassionate ground and therefore there is no violation of the provisions of Section 25-G of the I. D. Act, however, the respondents have not led cogent evidence on record to prove that the aforesaid workmen were engaged on compassionate ground after seeking approval from the government except seniority list Ext. R-2 wherein Roshani Devi shown at serial No. 652 was engaged on 4.7.1999, Mamta Devi shown at serial No. 648 was engaged on 6.4.2000 and Inder Singh shown at serial No. 647 was engaged on 1.1.2000 and thus Roshani Devi was engaged after engagement of the petitioner in January, 1999 and before termination of her services in August, 1999 and she was junior to the petitioner and she was not engaged on compassionate ground therefore, it is established on record that Roshani Devi was engaged after the engagement of the petitioner and she was retained in service while terminating the services of the petitioner in August, 1999. Hence it is established on record that the respondents have retained junior to the petitioner in service while terminating her services in contravention of the principle of 'last come first go'. Hence the violation of Section 25-G of the I. D. Act is proved.

30. The petitioner has also alleged that the respondents have engaged fresh hands after terminating her services in the year 1999. The petitioner in para No.4 of claim petition has alleged that the respondents have engaged fresh hands namely Ajay Kumar on 1-12-2003, Pradeep Kumar on 23-11-2007, Lekh Raj on November, 2004 and Satya Devi on 27-1-2011 after terminating her services in August, 1999 but she was not given opportunity of re-engagement. The respondents in reply to para No. 4, have averred that para No.4 of the petition need no reply as mentioned in para supra and therefore, the respondents have admitted the same. Furthermore, the petitioner has placed seniority list Ext. PW1/B of 834 workers *w.e.f.* 01-01-2000 to 31-12-2000 on record. The respondents have not disputed that the seniority list Ext. PW1/B. It would be evident from the perusal of the seniority list that the respondents have engaged all the 834 workmen of different categories including "beldars" from 1.1.2000 onwards. Thus in view of aforesaid admission of respondents and the seniority list Ext. PW1/B, it is also established on record that the respondents have engaged numerous beldars after termination of the services of the petitioner in August, 1999, but admittedly, no opportunity of re-employment was given to her. Hence violation of Section 25-H of the I. D. Act is also proved.

31. The petitioner thus has proved on record that the respondents have terminated her services in violation of the principle of 'last come first go' and engaged fresh hands without giving opportunity of re-employment to her.

32. Now coming to the question of delay and laches. The petitioner has raised industrial dispute by issuing demand notice dated 7.6.2015 after lapse of more than 15 years of termination of her services in the month of August, 1999 and thus there is considerable delay in raising the industrial dispute and the claim is bad on account of delay and laches. However, it is fairly well settled that no period of limitation is prescribed under the Industrial Disputes Act for raising dispute and claim of the workman cannot be rejected on account of delay and laches alone.

33. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

- [7] After a close scrutiny of the material available on record vis- -vis reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31-8-2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 12 1/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.
- [8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of

industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.: Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. DhanKunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in GirjaNand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13-3-2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2-4-2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3-4-2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

- [9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in the February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 121/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.
- [10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017 and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.
- [11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in Workmen Rastriya Colliery MazdoorSangh v. Bharat Coking Coal Ltd., 2016 9 SCC 431 and Rashtriya Colliery

MazdoorSangh v. Employers, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs.4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

34. Thus, in view of the law laid down by the Hon'ble High Court in abovesaid case, there is no period of limitation prescribed under the Industrial Disputes Act for raising dispute, but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists and it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist and if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement.

35. In the case in hand, as has been observed above, the petitioner while appearing as PW1 has stated that after termination of her services, she approached the respondents several time and moved applications to the respondents to re-engage her, but she was not re-engaged and her evidence to this effect has been corroborated by Khyali Singh PW2 as well as applications Ext. PW2/B moved by her on 20-8-2002, Ext. PW2/E moved on 5-1-2004, Ext. PW2/C moved on 6-1-2006 and Ext. PW2/D moved on 25-5-2007, which in turn proves on record that the petitioner after termination of her services, kept on making requests to the respondents to re-engage her till 25-5-2007, but she was not engaged and therefore in such set of circumstances, it can safely be held that despite delay in raising dispute, the dispute between the parties still exists. Since the respondents have terminated the services of the petitioner in violation the principle of 'last come first go' and after termination of her services, fresh hands were engaged by the respondents without giving opportunity to the petitioner for re-employment, the petitioner taking into consideration the aforesaid facts and circumstances of the case and the delay in raising dispute, in view of law laid down by Hon'ble High Court in above said case, is entitled to compensation instead of reinstatement.

36. Hence, taking into consideration the number of working days i.e. 203 for which the petitioner worked with the department from January, 1999 to August, 1999 and facts and circumstances of the case, I am of considered view that it would be in the interest of justice if a sum of Rs.4,00,000/- is awarded as compensation to the petitioner. Hence issues No.1 and 2 are decided in favour of petitioner and issue No. 4 is decided in favour of respondents and are answered as such.

Issue No.3

37. In view of my findings returned on issues No.1 and 2 above, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Relief

38. In view of my returned findings on issues No. 1 and 2, the claim petition is partly allowed and a sum of Rs.4,00,000/- (Rupees Four Lakh Only) is awarded as compensation to the petitioner for terminating her services in violation the principle of 'last come first go' and engaging fresh hands after termination of her services without giving an opportunity to her for re-employment. The respondents shall pay the said compensation within period of three months,

failing which the respondents shall pay interest @ 12% per annum on compensation amount from the date of filing of the statement of claim till realization of the amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of May, 2024.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

In the Court of Tehsildar-cum-Executive Magistrate, Bharmour, District Chamba (H.P.)

Smt. Reshma Devi d/o Sh. Behmi Ram, r/o Village Sachuine, P.O. & Tehsil Bharmour,
District Chamba, H.P. *Applicant.*

Versus

General Public

Proclamation under order 5 Rule 20 C.P.C. under Section 13(3) of the H.P. Registration of Births and Deaths Act, 1969.

Whereas, Smt. Reshma Devi d/o Sh. Behmi Ram, r/o Village Sachuine, P.O. & Tehsil Bharmour, District Chamba, H.P. has filed affidavit for registration for her Delayed Birth *i.e.* 25-07-1967 for further entry in the records of Gram Panchayat Sachuine, development block Bharmour. It has been stated in the application that due to some unavoidable circumstances birth could not be registered well in time.

Sl. No.	Name	Date of Birth
1.	Smt. Reshma Devi d/o Sh. Behmi Ram	25-07-1967

Hence, this proclamation is issued to the General Public, that if they have any objection/claim regarding the registration of birth of above named in records of concerned Gram Panchayat Sachuine may file their claim/objection on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued under my hand & seal today on this 19th day of December, 2024.

Seal.

Sd/-
Tehsildar-cum-Executive Magistrate,
Bharmour, Distt. Chamba (H.P.).

In the Court of Tehsildar-cum-Executive Magistrate, Bharmour, District Chamba (H.P.)

Smt. Bhoto Devi d/o Sh. Heera Lal, r/o Village Sullo, P.O. Auraphati, Tehsil Bharmour, District Chamba, H.P. Applicant.

Versus

General Public

Proclamation under order 5 Rule 20 C.P.C. under Section 13(3) of the H.P. Registration of Births and Deaths Act, 1969.

Whereas, Smt. Bhoto Devi d/o Sh. Heera Lal, r/o Village Sullo, P.O. Auraphati, Tehsil Bharmour, District Chamba, H.P. has filed affidavit for registration for his/her Delayed Birth/Death *i.e.* 11-05-1968 for further entry in the records of Gram Panchayat Auraphati, development block Bharmour. It has been stated in the application that due to some unavoidable circumstances birth/death could not be registered well in time.

Sl. No.	Name	Date of Birth
1.	Smt. Bhoto Devi d/o Sh. Heera Lal	11-05-1968

Hence, this proclamation is issued to the General Public, that if they have any objection/claim regarding the registration of birth of above named in records of concerned Gram Panchayat Auraphati may file their claim/objection on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued under my hand & seal today on this 19th day of December, 2024.

Seal.

Sd/-
Tehsildar-cum-Executive Magistrate,
Bharmour, Distt. Chamba (H.P.).

In the Court of Sub-Divisional Magistrate, Chamba, District Chamba (H. P.)

Karan Hiteshi s/o Sh. Tilak Raj, resident of mohalla Dharog, Chamba Town, Tehsil & Distt Chamba, H.P.

and

Isha d/o Sh. Rishi Ram, resident of Village Jamna, P.O. Didwin, Tehsil Barsar, Distt. Hamirpur, H.P.

Versus

General Public

Subject.— Registration of Marriage under Section 8(4) of the H.P. Registration of Marriages Act, 1996 (Act No. 21 of 1997).

PUBLIC NOTICE

Whereas, the above named applicants have made an application before me under section 8(4) of H.P. Registration of Marriages Act, 1996 alongwith relevant records and affidavits stating therein that they have solemnized their marriage on 12-05-2022 at their place of residence with prevailing rites and customs but due to some un-avoidable circumstances it could not be entered in the records of Municipal Council Chamba well in time.

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the registrar of marriage and now, therefore, necessary orders for the registration of their marriage be passed, so that their marriage could be registered by the concerned authority.

Now, therefore, objections are invited from the general public that if, anyone has any objection regarding the registration of marriage of above named applicants, they should appear before the undersigned in my court on or before 18-01-2025 at 2.00 P.M. either personally or through their authorised agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 19th day of December, 2024.

Seal.

Sd/-
(PRIYANSHU KHATI, IAS),
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

In the Court of Sub-Divisional Magistrate, Chamba, District Chamba (H. P.)

Bam Dev s/o Sh. Gulabu, aged 59 years, resident of Village Daduien, P.O. Chakloo, Tehsil & District Chamba (H. P).

and

Umesh Bala d/o Sh. Loki Nand, resident of Village Tipri, P.O. Chakloo, Tehsil & District Chamba H.P.

Versus

The General Public

Subject.— Notice regarding registration of Marriage under section 15 & 16 of Special of Marriage Act, 1954.

Whereas, the above named applicants have made an application before the undersigned under section 15 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) alongwith affidavits and other relevant documents stating therein that they have solemnized their marriage on 12-03-1992 at their place of residences and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Now therefore, the general public is hereby informed through this notice that any person who has any objection regarding the registration of this marriage can file the objections personally or in writing before this court on or before 20-01-2025. After that no objections will be entertained and marriage will be registered accordingly.

Issued under my hand and seal of the Court on this 21st December, 2024.

Seal.

PRIYANSHU KHATI, IAS,
Sub-Divisional Magistrate,
Chamba, District Chamba (H.P.).

ब अदालत पूजा अधिकारी (हि0प्र0से0) सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, कांगड़ा,
तहसील व जिला कांगड़ा (हि0प्र0)

मिसल नं0
76 / 24 / TEH

तारीख दायरा
23-12-2024

तारीख पेशी
07-01-2025

प्रार्थी जीवन सिंह पुत्र सरन दास, निवासी महाल सौहड़ा, तहसील व जिला कांगड़ा, हि0 प्र0

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 37(2) भू-राजस्व अधिनियम, 1954 के अन्तर्गत नाम दुरुस्ती करवाने बारे।

उपरोक्त प्रार्थी द्वारा अधोहस्ताक्षरी के समक्ष नाम दुरुस्ती हेतु प्रार्थना-पत्र प्रस्तुत किया है। प्रार्थी द्वारा आग्रह किया गया है कि महाल पैहग, सौहड़ा, वल्ला पटवार वृत्त अवदुल्लपुर, तहसील व जिला कांगड़ा, हि0 प्र0 के राजस्व रिकार्ड में प्रार्थी का नाम जीवन कुमार दर्ज है जोकि गलत है। जबकि अन्य कागजात में प्रार्थी का नाम जीवन सिंह पुत्र सरन दास दर्ज है जोकि सही है। अतः राजस्व रिकार्ड में सही नाम जीवन कुमार की बजाए जीवन सिंह उर्फ जीवन कुमार पुत्र सरन दास दर्ज किया जाए।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस नाम दुरुस्ती बारे किसी को कोई एतराज हो तो अधोहस्ताक्षरी के समक्ष दिनांक 07-01-2025 को हाजिर आकर अपना एतराज प्रस्तुत कर सकते हैं। निर्धारित अवधि तक एतराज प्राप्त न होने पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 26-12-2024 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / -
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
कांगड़ा, तहसील व जिला कांगड़ा (हि0प्र0)।

ब अदालत पूजा अधिकारी (हि0प्र0से0) सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, कांगड़ा,
तहसील व जिला कांगड़ा (हि0प्र0)

मिसल नं0
75 / 24 / TEH

तारीख दायरा
23-12-2024

तारीख पेशी
07-01-2025

प्रार्थी काव्य चौधरी पुत्र शशीपाल, निवासी महाल सौहड़ा, तहसील व जिला कांगड़ा, हि0 प्र0

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 37(2) भू—राजस्व अधिनियम, 1954 के अन्तर्गत नाम दुरुस्ती करवाने बारे।

उपरोक्त प्रार्थी द्वारा अधोहस्ताक्षरी के समक्ष नाम दुरुस्ती हेतु प्रार्थना—पत्र प्रस्तुत किया है। प्रार्थी द्वारा आग्रह किया गया है कि महाल पैहग, सौहड़ा, वल्ला पटवार वृत्त अवदुल्लपुर, तहसील व जिला कांगड़ा, हि0 प्र0 के राजस्व रिकार्ड में प्रार्थी का नाम काव्य दर्ज है जोकि गलत है। जबकि अन्य कागजात में प्रार्थी का नाम काव्य चौधरी पुत्र शशीपाल दर्ज है जोकि सही है। अतः राजस्व रिकार्ड में सही नाम काव्य की बजाए काव्य चौधरी पुत्र शशीपाल दर्ज किया जाए।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस नाम दुरुस्ती बारे किसी को कोई एतराज हो तो अधोहस्ताक्षरी के समक्ष दिनांक 07-01-2025 को हाजिर आकर अपना एतराज प्रस्तुत कर सकते हैं। निर्धारित अवधि तक एतराज प्राप्त न होने पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 26-12-2024 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
कांगड़ा, तहसील व जिला कांगड़ा (हि0प्र0)।

ब अदालत पूजा अधिकारी (हि0प्र0से0) सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, कांगड़ा,
तहसील व जिला कांगड़ा (हि0प्र0)

मिसल नं0
77/24/TEH
78/24/TEH

तारीख दायरा
23-12-2024

तारीख पेशी
17-01-2025

प्रार्थिया श्रीमती सोमा देवी उपनाम वीना कुमारी पत्नी अरजीत सिंह, निवासी महाल तियारा, तहसील व जिला कांगड़ा, हि0 प्र0।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 37(2) भू—राजस्व अधिनियम, 1954 के अन्तर्गत नाम दुरुस्ती करवाने बारे।

उपरोक्त प्रार्थिया द्वारा अधोहस्ताक्षरी के समक्ष नाम दुरुस्ती हेतु प्रार्थना—पत्र प्रस्तुत किया है। प्रार्थिया द्वारा आग्रह किया गया है कि महाल तियारा खास व तियारा ढुगियारी, पटवार वृत्त तियारा, तहसील व जिला कांगड़ा, हि0 प्र0 के राजस्व रिकार्ड में प्रार्थिया का नाम सोमा देवी दर्ज है जोकि गलत है। जबकि अन्य कागजात में प्रार्थिया का नाम वीना कुमारी पत्नी अरजीत सिंह दर्ज है जोकि सही है। अतः राजस्व रिकार्ड में सही नाम सोमा देवी की बजाए श्रीमती सोमा देवी उपनाम वीना कुमारी पत्नी अरजीत सिंह, निवासी महाल तियारा दर्ज किया जाए।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस नाम दुरुस्ती बारे किसी को कोई एतराज हो तो अधोहस्ताक्षरी के समक्ष दिनांक 17-01-2025 को हाजिर आकर अपना एतराज प्रस्तुत कर सकते हैं। निर्धारित अवधि तक एतराज प्राप्त न होने पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 30-12-2024 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
कांगड़ा, तहसील व जिला कांगड़ा (हि0प्र0)।

ब अदालत पूजा अधिकारी (हि0प्र0से0) सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, कांगड़ा,
तहसील व जिला कांगड़ा (हि0प्र0)

मिसल नं0
68 / 69 / 71 / 2024 / TEH

तारीख दायरा
23-12-2024

तारीख पेशी
07-01-2025

प्रार्थीगण सर्वश्रीमती प्रेमलता सुदर्शना देवी, सुदेश कुमारी, कमला देवी पुत्रियां सरन दास, निवासी महाल गगल, तहसील व जिला कांगड़ा, हि0 प्र0।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 37(2) भू-राजस्व अधिनियम, 1954 के अन्तर्गत नाम दुरुस्ती करवाने बारे।

उपरोक्त प्रार्थी द्वारा अधोहस्ताक्षरी के समक्ष नाम दुरुस्ती हेतु प्रार्थना-पत्र प्रस्तुत किया है। प्रार्थी द्वारा आग्रह किया गया है कि महाल गगल खास, पटवार वृत्त गगल, तहसील व जिला कांगड़ा, हि0 प्र0 के राजस्व रिकार्ड में प्रार्थिया के पिता का नाम सरनू दर्ज है जोकि गलत है। जबकि अन्य कागजात में प्रार्थिया के पिता का नाम सरन दास पुत्र पंजावा दर्ज है जोकि सही है। अतः राजस्व रिकार्ड में सही नाम सरनू की बजाए सरनू उपनाम सरन दास पुत्र पंजावा का इन्द्राज दर्ज किया जाए।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस नाम दुरुस्ती बारे किसी को कोई एतराज हो तो अधोहस्ताक्षरी के समक्ष दिनांक 07-01-2025 को हाजिर आकर अपना एतराज प्रस्तुत कर सकते हैं। निर्धारित अवधि तक एतराज प्राप्त न होने पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 26-12-2024 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
कांगड़ा, तहसील व जिला कांगड़ा (हि0प्र0)।

ब अदालत पूजा अधिकारी (हि0प्र0से0) सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, कांगड़ा,
तहसील व जिला कांगड़ा (हि0प्र0)

मिसल नं0
67 / 70 / 72 / 73 / 2024 / TEH

तारीख दायरा
23-12-2024

तारीख पेशी
07-01-2025

प्रार्थीगण सर्वश्रीमती प्रेमलता सुदर्शना देवी, सुदेश कुमारी, कमला देवी पुत्रियां सरन दास, निवासी महाल झिकली इच्छी, तहसील व जिला कांगड़ा, हि0 प्र0।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 37(2) भू—राजस्व अधिनियम, 1954 के अन्तर्गत नाम दुरुस्ती करवाने बारे।

उपरोक्त प्रार्थी द्वारा अधोहस्ताक्षरी के समक्ष नाम दुरुस्ती हेतु प्रार्थना—पत्र प्रस्तुत किया है। प्रार्थी द्वारा आग्रह किया गया है कि महाल झिकली इच्छी, पटवार वृत्त इच्छी, तहसील व जिला कांगड़ा, हि0 प्र0 के राजस्व रिकार्ड में प्रार्थिया के पिता का नाम सरन दर्ज है जोकि गलत है। जबकि अन्य कागजात में प्रार्थिया के पिता का नाम सरन दास पुत्र पंजावा दर्ज है जोकि सही है। अतः राजस्व रिकार्ड में सही नाम रामसरन की बजाए रामसरन उपनाम सरन दास पुत्र पंजावा का इन्द्राज दर्ज किया जाए।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस नाम दुरुस्ती बारे किसी को कोई एतराज हो तो अधोहस्ताक्षरी के समक्ष दिनांक 07-01-2025 को हाजिर आकर अपना एतराज प्रस्तुत कर सकते हैं। निर्धारित अवधि तक एतराज प्राप्त न होने पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 26-12-2024 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—

सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
कांगड़ा, तहसील व जिला कांगड़ा (हि0प्र0)।

**In the Court of Sh. Kartar Chand, Marriage Officer-cum-Sub-Divisional Magistrate
Shahpur, Distt. Kangra (H.P.)**

1. Shri Rahul s/o Harbans Lal, Ward No. 07, Ranehar Khas, P.O. Rehlu, Tehsil Shahpur, Distt. Kangra (H.P.).

2. Smt. Sakshi Devi d/o Narso Ram, Village Thehru, P.O. Garnota, Tehsil Sihunta, District Chamba (H.P.)
.. Applicants.

Versus

3. General Public.

4. Local Registrar, Gram Panchyat Rait.

.. Respondents.

Subject.—Application for the Marriage Registration u/s 16 of special Marriage Act, 1954.

Applicants Shri Rahul s/o Harbans Lal, Ward No. 07, Ranehar Khas, P.O. Rehlu, Tehsil Shahpur, Distt. Kangra (H.P.) and Smt. Sakshi Devi d/o Narso Ram, Village Thehru, P.O. Garnota, Tehsil Sihunta, District Chamba (H.P.) has filled an application u/s 16 of Special Marriage Act, 1954 alongwith declaration in which they have stated that they have solemnized their marriage on 20-04-2024 at Shri Mata Mansa Chamunda Ji, Tehsil Dharamshala, Distt. Kangra (H.P.) as per Hindu rites & customs.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding the registration of this marriage can file an objection personally or in writing before this court on or before 19-01-2025. After that no objection will be entertained and marriage will be registered accordingly.

Seal.

Sd/-
(KARTAR CHAND),
Marriage Officer-cum-Sub-Divisional Magistrate,
Shahpur, Distt. Kangra (H.P.).

In the Court of Sh. Raman Kumar Sharma, Special Marriage Officer-cum-Sub-Divisional Magistrate, Manali, District Kullu (H.P.)

In the matter of :

Shri Tenzin Tandup Bodh son of Shri Gopal Singh Bodh, resident of Village Shuru, P.O. Prini, Tehsil Manali, District Kullu, H.P. and Smt. Rinchen Dolma daughter of Shri Sonam Angrup, resident of Village Kalath Chhiyal, P.O. Kalath, Tehsil Manali, District Kullu (H.P.).

Versus

General Public

An application for the registration of marriage under Special Marriage Act, 1954.

Whereas, Shri Tenzin Tandup Bodh son of Shri Gopal Singh Bodh, resident of Village Shuru, P.O. Prini, Tehsil Manali, District Kullu, H.P. and Smt. Rinchen Dolma daughter of Shri Sonam Angrup, resident of Village Kalath Chhiyal, P.O. Kalath, Tehsil Manali, District Kullu (H.P.) have presented an application on 20-12-2024 in this court for the registration of marriage under Special Marriage Act, 1954. Hence this proclamation is hereby issued for the information of General Public that if any person have any objection for the registration of the above marriage can appear in this court within 30 days from the publication of this notice, in case no objection is received it will be presumed that there is no objection to the registration of above said marriage and the same will be registered accordingly.

Given under my hand and seal of the court on 20-12-2024.

Seal.

Sd/-
Special Marriage Officer-cum-
Sub-Divisional Magistrate,
Manali, District Kullu (H.P.).

In the Court of Sh. Vikas Shukla, Marriage Officer-cum-Sub-Divisional Magistrate, Kullu, District Kullu (H.P.)

1. Kamal Malla s/o Sh. Sukh Bhadur, r/o Village Bagicha, P.O. Piplage, Tehsil Bhunter, Distt. Kullu (H.P.).

2. Pushpa Devi d/o Sh. Ram Krishan, r/o Village Bagicha, P.O. Piplage, Tehsil Bhunter, District Kullu ..Applicants.

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 15 of Special Marriage Act, 1954.

Kamal Malla and Pushpa Devi have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 14-10-2026 and they are living as husband and wife since then, hence their marriage may be registred under Act *ibid*.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or writing before this court on or before 19-01-2025. The objection received after 19-01-2025 will not be entertained and marriage will be registered accordingly.

Issued today on 20-12-2024 under my hand and seal of the court.

Seal.

VIKAS SHUKLA, HAS,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Kullu, District Kullu (H.P.).*

In the Court of Sub-Divisional Magistrate-cum-Marriage Officer, Kasauli

1. Sh. Neel Kamal aged 30 years D.O.B. 03-03-1994, r/o Village Kot, P.O. Jabli, Tehsil Kasauli, Distt. Solan (H.P.).

2. Smt. Kanta Devi Aged 26 years D.O.B. 10-10-1998 d/o Sh. Parkash Chand, r/o Village Kainthri Kiar Koti, P.O. Mashobra, Tehsil & Distt. Solan (H.P.).

Versus

General Public

Notice u/s 15 of the Special Marriage Act, 1954.

An application under section 15 of the Special Marriage Act, 1954 has been received in this court from Sh. Neel Kamal aged 30 years D.O.B. 03-03-1994, r/o Village Kot, P.O. Jabli, Tehsil Kasauli Distt. Solan (H.P.) (Bride groom) and Smt. Kanta Devi Aged 26 years D.O.B. 10-10-1998 d/o Sh. Parkash Chand, r/o Village Kainthri Kiar Koti, P.O. Mashobra, Tehsil & Distt. Solan (H.P.) for the registration of their marriage u/s 15 of the Special Marriage Act, 1954. The

applicants have further declared in their affidavits dated 15-10-2024 that they have solemnized their marriage with each other on 18-04-2024. Before taking further action in the said application, objections from the general public are invited for the registration of this marriage. The objections in this regard should reach this court on or before 11-01-2025, failing which the marriage shall be got registered as per the provisions of the law.

Issued on 11-12-2024 under my hand and seal of the court.

Seal.

Sd/-
(MAHENDER PARTAP SINGH, HAS),
Marriage Officer-cum-Sub-Divisional Magistrate,
Kasauli, District Solan (H. P.).

In the Court of Sub-Divisional Magistrate-cum-Marriage Officer, Kasauli

1. Sh. Vijay Singh aged 56 year D.O.B. 25-05-1968 s/o Sh. Chattar Singh, r/o Dhakriana, P.O. Dhakriana, Tehsil Kasauli, Distt. Solan (H.P.).

2. Smt. Bimla Devi Aged 54 year D.O.B. 04-03-1971, d/o Sh. Budhi Singh, r/o Nadukhar, P.O. Basantpur, Tehsil Sunni, Distt. Shimla (H.P.).

Versus

General Public

Notice u/s 15 of the Special Marriage Act, 1954.

An application under section 15 of the Special Marriage Act, 1954 has been received in this court from Sh. Vijay Singh aged 56 year D.O.B. 25-05-1968 s/o Sh. Chattar Singh, r/o Dhakriana, P.O. Dhakriana, Tehsil Kasauli, Distt. Solan (H.P.) (Bride groom) and Smt. Bimla Devi Aged 54 year D.O.B. 04-03-1971 d/o Sh. Budhi Singh, r/o Nadukhar, P.O. Basantpur, Tehsil Sunni, Distt. Shimla (H.P.) for the registration of their marriage u/s 15 of the Special Marriage Act, 1954. The applicants have further declared in their affidavits dated 24-07-2023 that they have solemnized their marriage with each other on 19-11-1995. Before taking further action in the said application, objections from the general public are invited for the registration of this marriage. The objections in this regard should reach this court on or before 13-01-2025, failing which the marriage shall be got registered as per the provisions of the law.

Issued on 13-12-2024 under my hand and seal of the court.

Seal.

Sd/-
(MAHENDER PARTAP SINGH, HAS),
Marriage Officer-cum-Sub-Divisional Magistrate,
Kasauli, District Solan (H. P.).

In the Court of Sub-Divisional Magistrate-cum-Marriage Officer, Kasauli

1. Sh. Nishank Gupta aged 31 years D.O.B. 07-08-1992 s/o Sh. Sudhir Gupta, r/o House 24A, Sadar Bazar Kasauli, P.O. & Tehsil Kasauli, Distt. Solan (H.P.).

2. Smt. Madhuri aged 27 years D.O.B. 25-10-1997 d/o Sh. Rajesh Kumar, r/o Village Nizam Pur, North West Delhi, Delhi.

Versus

General Public

Notice u/s 15 of the Special Marriage Act, 1954.

An application under section 15 of the Special Marriage Act, 1954 has been received in this court from Sh. Nishank Gupta aged 31 years D.O.B. 07-08-1992 s/o Sh. Sudhir Gupta, r/o House 24A, Sadar Bazar Kasauli, P.O. & Tehsil Kasauli, Distt. Solan (H.P.) (Bride groom) and Smt. Madhuri aged 27 years D.O.B. 25-10-1997 d/o Sh. Rajesh Kumar, r/o Village Nizam Pur, North West Delhi, Delhi at present Madhuri w/o Rajesh Kumar, r/o r/o Village Nizam Pur, North West Delhi, Delhi, at present Madhuri w/o Sh. Nishank Gupta s/o Sh. Sudhir Gupta, r/o House 24A, Sadar Bazar Kasauli, P.O. & Tehsil Kasauli, District Solan, H.P., for the registration of their marriage u/s 15 of the Special Marriage Act, 1954. The applicants have further declared in their affidavits dated 06-06-2024 that they have solemnized their marriage with each other on 06-02-2024. Before taking further action in the said application, objections from the general public are invited for the registration of this marriage. The objections in this regard should reach this court on or before 11-12-2024, failing which the marriage shall be got registered as per the provisions of the law.

Issued on 30-10-2024 my hand and seal in the court.

Seal.

Sd/-
(MAHENDER PARTAP SINGH, HAS),
Marriage Officer-cum-Sub-Divisional Magistrate,
Kasauli, District Solan (H. P.).

CHANGE OF NAME

I, Kumari Tanu Surendra Sharma d/o Sh. Surendra Sharma, r/o Village Sasan, P.O. Jhaniari, Tehsil & District Hamirpur (H.P.) declare that I have changed my name from Tanu Surendra Sharma to Kumari Tanu Surendra Sharma for all purpose in future. Please note.

Kumari Tanu Surendra Sharma
d/o Sh. Surendra Sharma,
r/o Village Sasan, P.O. Jhaniari,
Tehsil & District Hamirpur (H.P.).

CHANGE OF NAME

I, Geeta Devi w/o Late Anant Ram, Village Bharathu, P. O. Binola, Tehsil Sadar, District Bilaspur (H.P.) declare that in my Aadhar Card my name wrongly recorded Meena Devi. That my correct name is Geeta Devi. Which needs to be corrected. All concerned note.

GEETA DEVI
w/o Late Anant Ram,
Village Bharathu, P. O. Binola,
Tehsil Sadar, District Bilaspur (H.P.).

CHANGE OF NAME

I, Bimala Devi w/o Sh. Kanshi Ram, r/o Village Duhka, P.O. Ludder Mahadev, Tehsil Bhoranj, Destrict Hamirpur (H.P.) declares that I have changed my name from Vimla Devi to Bimala Devi for all purpose in furure. Please note.

BIMALA DEVI
w/o Sh. Kanshi Ram,
r/o Village Duhka, P.O. Ludder Mahadev,
Tehsil Bhoranj, Destrict Hamirpur (H.P.).

CHANGE OF NAME

I, Uma Devi w/o Dayal Singh, Village Panasha, P.O. Poshana, Tehsil Nirmand, District Kullu (H.P.) my daughter's name is Arthitha in Aadhar Card while it is recorded in Panchayat records. It is Archita Singh and in future it will be known as Archita Singh.

UMA DEVI
w/o Dayal Singh,
Village Panasha, P.O. Poshana,
Tehsil Nirmand, District Kullu (H.P.).

CHANGE OF NAME

I, Ajay Kumar s/o Sh. Fakir Chand, r/o Village Chaniara, P.O. Chaubin, Tehsil Baijnath, District Kangra (H.P.) declare that in the Aadhar Card No. 4047 0534 2891 of my son his name wrongly written as Aryan instead of his Correct name Ayaan. Concern note.

AJAY KUMAR
s/o Sh. Fakir Chand,
r/o Village Chaniara, P.O. Chaubin,
Tehsil Baijnath, District Kangra (H.P.).

CHANGE OF NAME

I, Dharmender Aggarwal s/o Bhupinder Kishore, r/o 3131/10, Katcha Tank Nahan, District Sirmaur (H.P.) have changed my minor daughter's name from Akshika Aggarwal (Old Name) to Akshita Aggarwal (New Name) which need to be corrected in Aadhar Card.

Dharmender Aggarwal
s/o Bhupinder Kishore,
r/o 3131/10, Katcha Tank Nahan,
District Sirmaur, Himachal Pradesh.

CHANGE OF NAME

I, Janki Devi w/o Inder Singh, V.P.O. Meramasit, Tehsil Sadar, District Mandi (H.P.) in my Aadhar No. 4545 1774 5160 Jamana Devi wrongly entered, correct name is Janki Devi.

JANKI DEVI
w/o Inder Singh,
V.P.O. Meramasit,
Tehsil Sadar, District Mandi (H.P.).

CHANGE OF NAME

I, Manish Verma s/o Sh. Sant Ram Verma, Village Seri, P.O. Galang, Tehsil & District Solan (H.P.) have changed my name from Manish, Manish Kumar, Manish Kumar Verma to Manish Verma and shall hereafter be known as Manish Verma.

MANISH VERMA
s/o Sh. Sant Ram Verma,
Village Seri, P.O. Galang,
Tehsil & District Solan (H.P.).

CHANGE OF NAME

I, Virender Panwar s/o Sunder Lal Panwar, P 2/618 Jaral Colony Pandoh, P.O. Pandoh, Tehsil Sadar, District Mandi (H.P.) my minor son name Harinah wrongly entered in Aadhar No. 9538 4772 0467 correct name is Himank Panwar.

VIRENDER PANWAR
s/o Sunder Lal Panwar,
P 2/618 Jaral Colony Pandoh, P.O. Pandoh,
Tehsil Sadar, District Mandi (H.P.).

CHANGE OF NAME

I, Gurbachan s/o Lachhu Ram, Village Stoh, P.O. Rajgarh, Tehsil Balh, District Mandi (H.P.) my minor daughter name Sheets Chauhan wrongly entered in my Aadhar No. 7556 8961 7380, correct name is Shreya Chauhan.

GURBACHAN
s/o Lachhu Ram,
Village Stoh, P.O. Rajgarh, Tehsil Balh,
District Mandi (H.P.).

CHANGE OF NAME

I, Lekh Ram s/o Prem Singh, V.P.O. Alathu, Tehsil Sadar, District Mandi (H.P.) in my Aadhar No. 9468 5746 6845 Lekh Raj wrongly entered, correct name Lekh Ram.

LEKH RAM
s/o Prem Singh,
V.P.O. Alathu, Tehsil Sadar,
District Mandi (H.P.).

CHANGE OF NAME

I, Kala Devi w/o Late Sh. Bansi Ram, Village Darsal, P.O. Charot, Tehsil Sujanpur Tihra, District Hamirpur (H.P.)-176 110 declare that my name is wrongly written as Kala devi instead of Kalan Devi in my Aadhar Card No. 4563 5786 7100. Concern note.

KALA DEVI
w/o Late Sh. Bansi Ram,
Village Darsal, P.O. Charot,
Tehsil Sujanpur Tihra, District Hamirpur (H.P.)-176 110.

नाम परिवर्तन

मैं, रविंदर पुत्र कोमल सिंह, निवासी गांव व डा0 उरनी, उप-तहसील टापरी, जिला किन्नौर (हि0प्र0) घोषणा करता हूं कि मेरे आधार कार्ड में मेरा नाम रवि कुमार दर्ज है, जो गलत है। अतः इसे बदलकर रविंदर किया जाये।

रविंदर
पुत्र कोमल सिंह,
निवासी गांव व डा0 उरनी,
उप-तहसील टापरी, जिला किन्नौर (हि0प्र0)।

नाम परिवर्तन

मैं, मंजू राणा पत्नी सुधीर चंद, वीपीओ भौरा, तहसील पालमपुर, जिला कांगड़ा (हि0प्र0) घोषणा करती हूं कि मेरे बेटे सबल कटोच के मैट्रिक सर्टिफिकेट में मेरा और मेरे पति का नाम गलती से मंजू व सुधीर दर्ज हो गया है। जबकि मेरा और मेरे पति का सही नाम मंजू राणा व सुधीर चंद है। संबंधित नोट करें।

मंजू राणा
पत्नी सुधीर चंद,
वीपीओ भौरा, तहसील पालमपुर,
जिला कांगड़ा (हि0प्र0)।

नाम परिवर्तन

मैं, नवल किशोर शर्मा सुपुत्र स्वर्गीय श्री चेतन राम शर्मा, निवासी रलू, डाकघर रामपुर, तहसील निरमंड, जिला कुल्लू (हि0प्र0) घोषणा करता हूं कि मेरे बेटे के आधार कार्ड नं0 8728 9209 1642 में उसका नाम दिव्यांश लिखा गया है, जो गलत है। इसे दुरुस्त कर मेरे बेटे का सही नाम दिव्यांशुल शर्मा किया जाए। संबंधित नोट करें।

नवल किशोर शर्मा
सुपुत्र स्वर्गीय श्री चेतन राम शर्मा,
निवासी रलू, डाकघर रामपुर,
तहसील निरमंड, जिला कुल्लू (हि0प्र0)।

नाम परिवर्तन

मैं, प्रवेश कुमार सुपुत्र श्री शिव दयाल, निवासी गांव मोईन, डाकघर निरथ, उप-तहसील निथर, जिला कुल्लू (हि0प्र0) घोषणा करता हूं कि मेरे बेटे के आधार कार्ड नं0 6491 0106 1230 में उसका नाम दिव्यांश चौहान लिखा गया है जो गलत है। मेरे बेटे का सही नाम दिव्यांश है। सभी संबंधित नोट करें।

प्रवेश कुमार
सुपुत्र श्री शिव दयाल,
निवासी गांव मोईन, डाकघर निरथ,
उप-तहसील निथर, जिला कुल्लू (हि0प्र0)।